Comptroller of the Currency
Administrator of National Banks

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Background

The Office of the Comptroller of the Currency (OCC) was established in 1863 as a bureau of the Department of the Treasury. The OCC is headed by the Comptroller who is appointed by the President, with the advice and consent of the Senate, for a 5-year term.

The OCC regulates national banks by its power to:

- Approve or deny applications for new charters, branches, capital or other changes in corporate or banking structure;
- Examine the banks;
- Take supervisory actions against banks which do not conform to laws and regulations or which otherwise engage in unsound banking practices, including removal of officers, negotiation of agreements to change existing banking practices and issuance of cease and desist orders; and
- Issue rules and regulations concerning banking practices and governing bank lending and investment practices and corporate structure.

The OCC divides the United States into six geographical districts, with each headed by a Deputy Comptroller.

The Office is funded through assessments on the assets of national banks.

The Comptroller

Robert Logan Clarke became the 26th Comptroller of the Currency on December 10, 1985.

By statute, the Comptroller serves a concurrent term as a Director of the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, and the Neighborhood Reinvestment Corporation, and as a member of the Federal Financial Institutions Examination Council.

An attorney, Mr. Clarke was formerly with the law firm of Bracewell & Patterson in Houston, Texas. He joined the firm in 1968 and founded its Banking Section in 1972.

Mr. Clarke received a B.A. degree from Rice University in 1963 and an LL.B. degree from Harvard University Law School in 1966. He served as a Captain in the United States Army from 1966 to 1968.

The *Quarterly Journal* is the journal of record for the most significant actions and policies of the Office of the Comptroller of the Currency. It is published four times a year in March, June, September and December. The *Quarterly Journal* includes policy statements, decisions on banking structure, selected speeches and testimony, material released in the interpretive letters series, statistical data and other information of interest to the administration of national banks. Suggestions, comments or questions on content may be sent to Patricia Eggleston, Senior Writer/Editor, Communications Division, Comptroller of the Currency, Washington, DC 20219. Subscriptions are available for $60 a year by writing to Publications—QJ, Comptroller of the Currency, Washington, DC 20219.

Quarterly Journal

Office of the Comptroller of the Currency

Robert L. Clarke

Comptroller of the Currency

The Administrator of National Banks

Contents

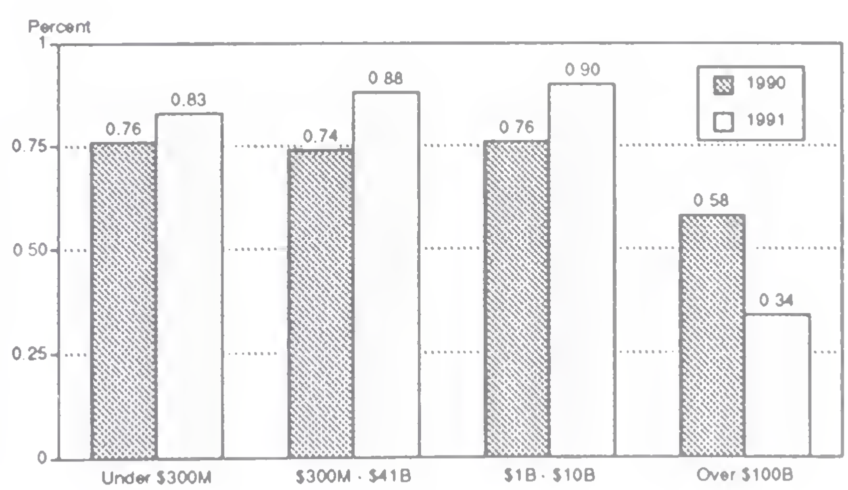
Operations of National Banks

Preliminary first quarter operating results for 3,950 reporting national banks indicate aggregate profits of $3.0 billion, representing an annualized return on assets (ROA) of 0.62 percent. Nearly 88 percent of all national banks were profitable during the quarter ending March 31, 1991; these profits substantially exceeded the $20 million in aggregate losses reported in the fourth quarter of 1990. However, earnings were 10 percent below the $3.3 billion that national banks reported during the first quarter of 1990.

The largest national banks accounted for most of the drop in income compared to the first quarter of 1990. Earnings were down nearly 40 percent at the 34 national banks with assets of $10 billion or more. Those banks, which account for 48 percent of all national bank assets, earned $0.8 billion in the first quarter of 1991 compared to $1.3 billion in the first quarter of 1990. Their ROA dropped to 0.34 percent in the first quarter of 1991 compared to 0.58 percent in the first quarter of 1990.

Reported profits and ROA were up in all other major size categories of banks. ROA was highest among national banks with between $1 billion and $10 billion in assets. Those banks achieved an ROA of 0.90 percent, up from 0.76 percent one year earlier. ROA was 0.88 percent at banks with between $300 million and $1 billion in assets and 0.83 percent at banks with less than $300 million in assets.

Return on Assets by Bank Size
(First Quarter 1990, 1991)

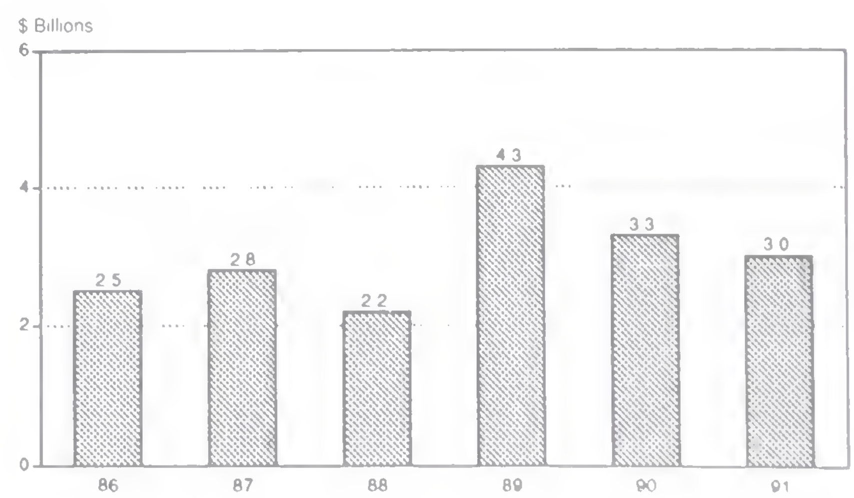


National banks affiliated with seven large multinational bank holding companies earned $940 million in the quarter. Their average ROA of 0.65 percent marginally exceeded the overall national bank average of 0.62 percent. Those 40 multinational bank affiliates are generally large banks, accounting for nearly 30 percent of total national bank assets. They are supervised by the OCC's multinational banking department in Washington, D.C. and national bank examiners are stationed permanently in the lead national bank of each company

The remaining 3,910 national banks are supervised by one of six OCC district offices — the Northeastern, Southeastern, Central, Midwestern, Southwestern, and Western districts. Earnings weaknesses in the first quarter were most evident in the Northeast, Southeast, and Southwest districts. In the Northeast, national banks earned $240 million in the quarter. Their average ROA was 0.25 percent, compared to 0.27 percent in the first quarter of 1990. In the Southeast, national banks earned $280 million in the quarter, compared to $420 million earned in the first quarter of 1990. Their average ROA in the first three months of 1991 was 0.42 percent, compared to 0.68 a year earlier. In the Southwest, national banks achieved an average ROA of 0.45 percent, but that represented a modest recovery in their profitability. National banks in the Southwest District earned an average ROA of 0.28 percent in 1990 and lost money in each of the four preceding years.

Outside of these three regions, the average ROA during the first quarter of 1991 was above 0.90 percent. The highest average ROA was in the West, where national banks achieved an ROA of 0.99 percent. That was down, however, from a 1.03 percent ROA during the first quarter of 1990. ROA was 0.97 percent in the Central District, up from 0.86 percent in the first quarter of 1990, and 0.94 percent in the Midwestern District, down from 1.01 percent in the first quarter of 1990.

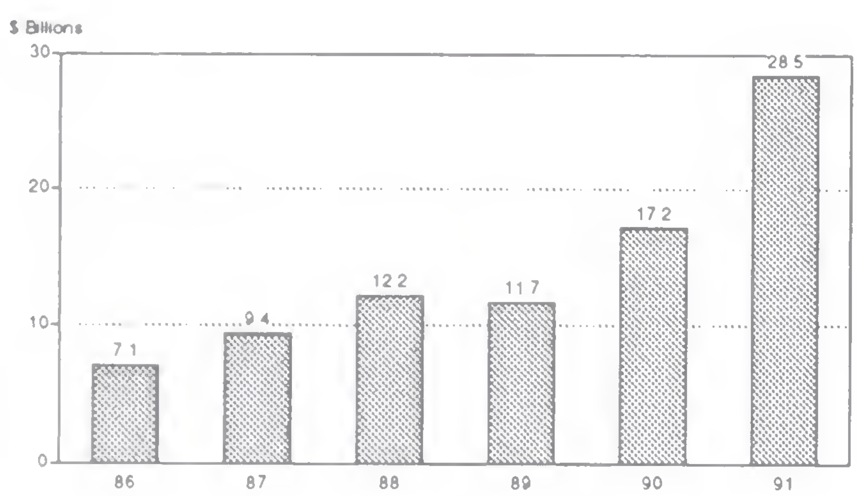
First Quarter Net Income
(1986 - 1991)



Weaknesses in earnings were largely attributable to deteriorating credit quality. Noncurrent loans, loans that are 90 or more days past due or loans that are on nonaccrual status, increased $3.4 billion in the first quarter of 1991 to $55.2 billion. That amount was $12.9 billion higher than the year-earlier level of $42.3 billion. Rising levels of noncurrent loans can cause banks to make additional allocations to their loan loss reserves to cover future loan losses. Those allocations to reserves, referred to as loan loss provisions, are direct charges against income. In this quarter, national banks allocated $4.5 billion to their loan loss reserve, compared to $4.1 billion in the first quarter of 1990.

Real estate loans were responsible for most of the rise in problem loans during the first quarter of 1991. Noncurrent real estate loans increased by $2.9 billion in the first quarter of 1991, to $28.2 billion. Other real estate owned (OREO), essentially foreclosed real estate, increased $2.9 billion in the quarter, to $16.4 billion. One year earlier, national banks held noncurrent real estate loans of $17.2 billion and OREO of $9.1 billion. Increases in both noncurrent real estate loans and OREO occurred in the multinational banks and in each of the six OCC districts in the first quarter of 1991. The biggest increases occurred in the multinationals and in the Northeast and the Southeast.

Noncurrent Real Estate Loans
(First Quarter, 1986 - 1991)



In the face of a weakening economy and rising levels of noncurrent and foreclosed loans, asset growth and loan growth at national banks were slow during the first quarter of 1991. Total assets dropped by $25.7 billion (1.3 percent) in the quarter, and were $14.3 billion below the year-earlier level. Assets declined during the first quarter in the multinationals and in each of the six OCC districts. Total loans outstanding at national banks dropped $7.2 billion (0.6 percent) in the quarter; only real estate loans increased, and they rose only $1.5 billion (0.3 percent). Loans fell in the multinationals and in each OCC district, except the Central. Compared to one year earlier, loans outstanding at national banks were virtually unchanged at $1.28 trillion.

Stephen M. Cross
Banking Research and Statistics

Aggregate Performance Statistics for National Banks. 1986-1991

(Data through March 31, 1991)

	March 31 1986	*March 31 1987*	*March 31 1988*	*March 31 1989*		
Industry Structure						
Number of Banks	4,916	4,788	4,528	[illegible]	[illegible]	[illegible]
Number of Banks with Losses	844	875	700	[illegible]	[illegible]	[illegible]
Number of Failed Banks	9	23	10	[illegible]	[illegible]	[illegible]
Income Statement ($Billions)						
Year-To-Date						
Net Income	2.50	2.84	2.20	4.29	[illegible]	[illegible]
Net Operating Cash Flow	5.21	5.04	5.32	6.53	7.19	6.94
Net Interest Income	13.94	14.20	15.06	16.66	16.82	[illegible]
Noninterest Income	5.30	5.88	6.85	7.34	8.56	[illegible]
Noninterest Expense	13.17	14.00	15.18	15.73	16.91	17.88
Loan Loss Provision	3.32	2.71	3.40	2.42	4.07	[illegible]
Net Loan Loss	2.06	2.22	2.78	2.56	4.35	4.14
First Quarter						
Net Income	2.50	2.84	2.20	4.29	3.30	[illegible]
Net Operating Cash Flow	5.21	5.04	5.32	6.53	7.19	6.94
Net Interest Income	13.94	14.20	15.06	16.66	16.82	17.24
Noninterest Income	5.30	5.88	6.85	7.34	8.56	[illegible]
Noninterest Expense	13.17	14.00	15.18	15.73	16.91	17.88
Loan Loss Provision	3.32	2.71	3.40	2.42	4.07	4.53
Net Loan Loss	2.06	2.22	2.78	2.56	4.35	4.14
Performance Ratios (%)						
Year-To-Date						
Return on Equity	10.32	11.00	8.80	15.60	11.41	[illegible]
Return on Assets	0.62	0.66	0.50	0.93	0.67	0.62
Net Interest Income to Assets	3.44	3.31	3.40	3.61	3.43	3.50
Loss Provision to Assets	0.82	0.63	0.77	0.52	0.83	0.92
Noninterest Income to Assets	1.31	1.37	1.55	1.59	1.75	1.81
Noninterest Expense to Assets	3.25	3.26	3.43	3.40	3.45	3.63
Real Estate Loans to Loans	26.77	29.87	32.37	35.15	37.20	39.44
Noncurrent Loans to Loans	2.92	4.03	3.75	3.11	3.31	4.32
Noncurrent RE Loans to RE Loans	2.61	2.96	3.31	2.78	3.61	5.59
Loss Reserve to Loans	1.55	1.74	2.90	2.41	2.50	2.63
Loss Reserve to Noncurrent Loans	52.99	43.29	77.31	77.76	75.58	60.75
Net Loan Loss to Loans	0.82	0.83	0.98	0.86	1.37	1.30
Loss Provision to Net Loan Loss	161.23	122.37	122.37	94.57	93.54	109.61
Equity Capital to Assets	6.03	6.16	5.66	6.00	5.99	6.27
Primary Capital to Assets + Reserves	7.17	7.41	7.63	7.68	7.70	8.04

Banking Research and Statistics

Aggregate Condition Statistics for National Banks, 1986-1990

(Data through March 31, 1991)

	March 31, 1986	March 31, 1987	March 31, 1988	March 31, 1989	March 31, 1990	March 31, 1991
[illegible]						
[illegible]	1,[illegible]	1,[illegible]	1,772.33	1,854.18	1,972.51	1,958.23
[illegible]	1,241.41	1,297.56	1,336.16	1,417.89	1,496.33	1,530.56
[illegible]	1,5[illegible].64	[illegible]	1,671.89	1,742.77	1,854.19	1,830.42
[illegible]	229.[illegible]	256.12	388.47	417.45	439.17	328.45
[illegible]	1,015.76	1,066.30	1,137.62	1,201.94	1,277.28	1,276.22
Real Estate Loans	271.95	318.69	368.22	422.51	475.09	503.30
Commercial & Industrial Loans	363.74	361.56	374.36	377.17	391.53	379.77
[illegible]	194.84	204.07	215.33	230.20	243.36	236.03
Noncurrent Loans	29.63	42.97	42.65	37.32	42.28	55.16
Noncurrent Real Estate Loans	7.18	9.42	12.19	11.73	17.17	28.15
Other Real Estate Owned	4.19	5.31	6.85	7.17	9.14	16.41
Restructured Loans	0.00	1.30	1.42	1.38	2.76	4.62
Loan Loss Reserve	15.70	16.60	32.97	29.02	31.96	33.51
Equity Capital	97.93	105.[illegible]	100.37	111.33	118.24	122.82
Primary Capital	117.49	127.87	137.79	144.66	154.39	160.23
Balance Sheet Changes ($Billions)						
Year-To-Date Gains (Losses)						
Assets	-6.34	32.91	2.42	8.01	3.52	25.66
Loans	7.89	15.61	16.10	7.82	-2.71	7.18
Real Estate Loans	8.20	10.38	10.67	14.88	8.88	1.50
Loan Loss Reserve	1.27	0.51	0.77	0.80	0.40	-0.62
Noncurrent Loans	1.85	12.15	0.60	1.27	1.31	3.40
Noncurrent Real Estate Loans	0.92	0.91	0.98	1.12	1.30	2.89
Other Real Estate Owned	0.28	0.33	0.66	0.43	0.08	1.97
Restructured Loans	0.00	0.23	0.03	0.15	1.41	-0.16
Equity Capital	1.80	3.02	0.59	3.18	4.61	2.91
Primary Capital	3.09	3.54	1.35	2.37	4.20	2.15
First Quarter Gains (Losses)						
Assets	6.34	32.91	1.42	8.01	3.52	-25.66
Loans	7.89	15.61	16.10	7.82	2.71	7.18
Real Estate Loans	8.20	10.38	10.67	14.88	8.88	1.50
Loan Loss Reserve	1.27	0.51	0.77	0.80	0.40	-0.62
Noncurrent Loans	1.85	12.15	0.60	1.27	1.31	3.40
Noncurrent Real Estate Loans	0.92	0.91	0.98	1.12	1.30	2.89
Other Real Estate Owned	0.28	0.33	0.66	0.43	0.08	1.97
Restructured Loans	0.00	0.23	0.03	0.15	1.41	0.16
Equity Capital	1.80	3.02	0.59	3.18	4.61	2.91
Primary Capital	3.09	3.54	1.35	2.37	4.20	2.15

Banking Research & Statistics

Aggregate Performance Statistics for National Banks by Asset Size
(Data through March 31, 1991)

	Under $300M		*$300-$1B*		*$1B-$10B*		*Over $10B*		*Total*	
	March 31 1990	*March 31, 1991*	*March 31 1990*	*March 31 1991*	*March 31 1990*	*March 31 1991*	*March 31 1990*	*March 31 1991*	*March 31 1990*	*March 31 1991*
Industry Structure										
Number of Banks	3,597	3,439	294	308	180	169	34	34	[illegible]	[illegible]
Number of Banks with Losses	475	431	28	26	18	21	6	8	527	486
Number of Failed Banks	22	9	1	0	0	2	0	1	23	12
Income Statement ($Billions)										
Year-To-Date										
Net Income	0.49	0.53	0.27	0.34	1.23	1.35	1.31	0.82	3.30	3.04
Net Operating Cash Flow	0.75	0.72	0.48	0.56	3.03	2.75	2.92	2.91	7.19	6.94
Net Interest Income	2.53	2.52	1.48	1.60	6.14	5.87	6.68	7.25	16.82	17.24
Noninterest Income	0.63	0.64	0.43	0.53	3.01	3.19	4.50	4.53	8.56	8.90
Noninterest Expense	2.18	2.23	1.30	1.43	5.72	5.91	7.70	8.31	16.91	17.88
Loan Loss Provision	0.28	0.23	0.22	0.24	1.87	1.82	1.70	2.24	4.07	4.53
Net Loan Loss	0.20	0.20	0.19	0.25	1.60	1.60	2.37	2.10	4.35	4.14
First Quarter										
Net Income	0.49	0.53	0.27	0.34	1.23	1.35	1.31	0.82	3.30	3.04
Net Operating Cash Flow	0.75	0.72	0.48	0.56	3.03	2.75	2.92	2.91	7.19	6.94
Net Interest Income	2.53	2.52	1.48	1.60	6.14	5.87	6.68	7.25	16.82	17.24
Noninterest Income	0.63	0.64	0.43	0.53	3.01	3.19	4.50	4.53	8.56	8.90
Noninterest Expense	2.18	2.23	1.30	1.43	5.72	5.91	7.70	8.31	16.01	17.88
Loan Loss Provision	0.28	0.23	0.22	0.24	1.87	1.82	1.70	2.24	4.07	4.53
Net Loan Loss	0.20	0.20	0.19	0.25	1.60	1.60	2.37	2.10	4.35	4.14
Performance Ratios (%)										
Year-To-Date										
Return on Equity	9.38	10.10	10.79	12.29	12.53	14.75	11.50	6.23	11.41	10.02
Return on Assets	0.76	0.83	0.74	0.88	0.76	0.90	0.58	0.34	0.67	0.62
Net Interest Income to Assets	3.92	3.96	4.11	4.08	3.77	3.91	2.94	3.03	3.43	3.50
Loss Provision to Assets	0.43	0.37	0.62	0.60	1.15	1.22	0.75	0.94	0.83	0.92
Noninterest Incomet to Assets	0.97	1.01	1.19	1.36	1.85	2.13	1.98	1.89	1.75	1.81
Noninterest Expense to Assets	3.39	3.50	3.63	3.64	3.52	3.94	3.39	3.47	3.45	3.63
Real Estate Loans to Loans	49.16	51.17	44.16	46.33	34.63	36.96	35.11	37.32	37.20	39.44
Noncurrent Loans to Loans	2.12	2.20	2.28	2.25	2.56	3.85	4.27	5.42	3.31	4.32
Noncurrent RE Loans to RE Loans	1.87	2.10	2.60	2.70	3.84	5.62	4.22	7.20	3.61	5.59
Loss Reserve to Loans	1.70	1.78	1.89	1.88	2.10	2.70	3.06	2.88	2.50	2.63
Loss Reserve to Noncurrent Loans	80.30	81.11	82.87	83.63	82.00	69.98	71.77	53.25	75.58	60.75
Net Loan Loss to Loans	0.55	0.56	0.80	0.99	1.47	1.63	1.59	1.30	1.37	1.30
Loss Provision to Net Loan Loss	140.74	119.12	119.55	96.30	116.82	114.41	71.87	106.63	93.54	109.61
Equity Capital to Assets	8.09	8.28	6.80	7.18	6.27	6.34	5.12	5.52	5.99	6.27
Primary Capital to Assets + Reserves	8.96	9.18	7.96	8.31	7.64	8.03	7.37	7.70	7.70	8.04

Banking Research and Statistics

Aggregate Condition Statistics for National Banks by Asset Size

(Data through March 31, 1991)

	[illegible]		$300M-$1B		$1B-$10B		Over $10B		Total	
	March 31 1990	March 31 1991	March 31 1990	March 31 1991	March 31 1990	March 31 1991	March 31 1990	March 31 1991	March 31 1990	March 31 1991
[illegible]										
[illegible]	[illegible]	254.70	151.17	159.03	622.09	610.87	943.58	953.54	[illegible]	[illegible]
[illegible]	226.09	[illegible]	126.90	133.84	463.16	470.38	680.79	70[illegible].61	1,496.93	[illegible]
[illegible]	134.16	[illegible]	140.89	147.61	583.88	572.14	895.2[illegible]	881.98	1,854.10	[illegible]
[illegible]	31.61	[illegible]	25.61	23.49	150.78	107.30	231.18	167.92	439.17	328.45
[illegible]	141.12	139.61	97.31	100.91	424.49	402.04	614.36	633.66	1,277.28	[illegible]
Real Estate Loans	69.38	71.44	42.97	46.76	147.02	148.61	215.72	236.50	475.09	503.3[illegible]
Commercial & Industrial Loans	30.39	28.23	22.28	22.06	118.70	108.72	220.16	220.76	391.53	379.77
[illegible]	19.95	28.23	24.52	24.45	114.31	104.48	74.59	78.87	243.36	236.03
[illegible]	[illegible].99	3.07	2.22	2.27	10.85	15.49	26.22	34.33	42.28	55.16
Noncurrent Real Estate Loans	1.30	1.60	1.12	1.26	5.65	8.36	9.11	17.03	17.17	28.15
Other Real Estate Owned	1.68	1.62	0.94	1.09	2.58	5.96	3.94	7.73	9.14	16.41
Restructured Loans	0.57	0.47	0.18	0.15	0.51	0.55	1.51	3.44	2.76	4.62
[illegible]	2.40	2.49	1.84	1.90	8.90	10.84	18.82	18.28	31.96	33.51
Equity Capital	20.61	21.10	10.28	11.42	39.04	38.73	48.32	51.56	118.24	122.82
Primary Capital	23.04	23.62	12.18	13.37	48.26	49.93	70.90	73.32	154.39	160.23
Balance Sheet Changes ($Billions)										
Year-to-Date Gains (Losses)										
Assets	4.04	0.70	5.50	0.76	-46.50	1.13	41.52	26.72	3.52	25.66
Loans	2.75	0.13	3.57	-0.50	24.99	7.57	21.46	14.12	2.71	7.18
Real Estate Loans	0.18	1.13	2.95	0.72	13.37	-0.26	19.49	0.09	8.88	1.50
Loan Loss Reserve	0.00	0.09	0.22	0.03	-0.61	0.27	0.01	1.01	0.40	0.62
Noncurrent Loans	0.04	0.21	0.38	0.12	0.00	1.37	0.88	1.70	1.31	3.40
Noncurrent Real Estate Loans	0.01	0.20	0.22	0.15	0.17	0.43	1.24	2.12	1.30	2.89
Other Real Estate Owned	0.00	0.05	0.22	0.11	0.44	0.90	0.14	0.90	-0.08	1.97
Restructured Loans	-0.01	0.00	0.02	0.00	0.11	0.04	1.28	0.12	1.41	0.16
Equity Capital	0.14	0.32	0.46	0.17	0.46	2.43	3.82	0.02	4.61	2.91
Primary Capital	0.15	0.41	0.68	0.20	0.42	2.65	4.09	-1.11	4.20	2.15
First Quarter Gains (Losses)										
Assets	4.04	0.70	5.50	0.76	46.50	1.13	41.52	26.72	3.52	25.66
Loans	2.75	0.13	3.57	0.50	24.99	7.57	21.46	14.12	2.71	7.18
Real Estate Loans	0.18	1.13	2.95	0.72	13.37	0.26	19.49	0.09	8.88	1.50
Loan Loss Reserve	0.00	0.09	0.22	0.03	0.61	0.27	0.01	1.01	0.40	0.62
Noncurrent Loans	0.04	0.21	0.38	0.12	0.00	1.37	0.88	1.70	1.31	3.40
Noncurrent Real Estate Loans	0.01	0.20	0.22	0.15	0.17	0.43	1.24	2.12	1.30	2.89
Other Real Estate Owned	0.00	0.05	0.22	0.11	0.44	0.90	0.14	0.90	0.08	1.97
Restructured Loans	0.01	0.00	0.02	0.00	0.11	0.04	1.28	-0.12	1.41	0.16
Equity Capital	0.14	0.32	0.46	0.17	0.46	2.43	3.82	-0.02	4.61	2.91
Primary Capital	0.15	0.41	0.68	0.20	-0.42	2.65	4.09	-1.11	4.20	2.15

Banking Research & Statistics

Aggregate Condition Statistics for National Banks by OCC District

(Data through March 31, 1991)

	Northeastern	Southeastern	Central	Midwestern	Southwestern	[illegible]	[illegible]	[illegible]
Balance Sheet ($Billions)								
Total Assets	386.20	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total Deposits	307.30	214.89	223.54	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Total Liabilities	363.36	252.52	264.80	106.11	[illegible]	[illegible]	[illegible]	[illegible]
Volatile Liabilities	60.65	42.91	47.88	14.78	[illegible]	[illegible]	[illegible]	[illegible]
Total Loans	247.91	173.58	180.93	65.31	[illegible]	[illegible]	[illegible]	[illegible]
Real Estate Loans	100.17	82.20	64.77	23.13	[illegible]	[illegible]	[illegible]	[illegible]
Commercial & Industrial Loans	73.03	40.26	59.05	18.64	[illegible]	[illegible]	[illegible]	[illegible]
Loans to Individuals	44.64	35.86	39.00	13.17	[illegible]	[illegible]	[illegible]	[illegible]
Noncurrent Loans	15.66	5.15	4.25	1.18	[illegible]	[illegible]	[illegible]	[illegible]
Noncurrent Real Estate Loans	9.16	3.43	1.63	0.47	[illegible]	[illegible]	[illegible]	[illegible]
Other Real Estate Owned	4.56	1.94	1.13	0.39	[illegible]	1.40	[illegible]	[illegible]
Restructured Loans	0.58	0.11	0.30	0.15	[illegible]	0.16	[illegible]	[illegible]
Loan Loss Reserve	8.41	3.59	3.15	1.28	[illegible]	[illegible]	[illegible]	[illegible]
Equity Capital	22.84	18.28	20.26	7.85	[illegible]	[illegible]	[illegible]	[illegible]
Primary Capital	32.05	22.22	23.47	9.32	11.73	[illegible]	[illegible]	[illegible]
Balance Sheet Changes ($Billions)								
Year-To-Date Gains (Losses)								
Assets	5.19	3.24	4.09	3.61	2.63	1.98	[illegible]	[illegible]
Loans	0.83	1.05	0.23	0.61	1.04	1.08	2.80	7.18
Real Estate Loans	1.14	0.14	0.95	0.15	0.03	0.37	[illegible]	[illegible]
Loan Loss Reserve	0.81	0.26	0.13	0.02	0.07	0.05	[illegible]	[illegible]
Noncurrent Loans	0.94	0.77	0.30	0.00	0.04	0.38	0.95	[illegible]
Noncurrent Real Estate Loans	0.30	0.57	0.19	0.03	0.05	0.27	1.48	[illegible]
Other Real Estate Owned	0.75	0.41	0.22	0.03	0.01	0.19	[illegible]	[illegible]
Restructured Loans	[illegible]	0.00	0.03	0.02	0.01	[illegible]	[illegible]	[illegible]
Equity Capital	1.64	0.15	0.33	0.17	0.14	0.35	[illegible]	2.91
Primary Capital	0.70	0.42	0.46	0.19	0.07	0.40	[illegible]	[illegible]
First Quarter Gains (Losses)								
Assets	5.19	3.24	4.09	3.61	2.63	1.98	[illegible]	15.66
Loans	0.83	1.05	0.23	0.61	1.04	1.08	[illegible]	7.18
Real Estate Loans	1.14	0.14	0.95	0.15	0.03	0.37	[illegible]	1.50
Loan Loss Reserve	0.81	0.26	0.13	0.02	0.07	[illegible]	[illegible]	[illegible]
Noncurrent Loans	0.94	0.77	0.30	0.00	0.04	0.38	0.95	3.40
Noncurrent Real Estate Loans	0.30	0.57	0.19	0.03	0.05	0.27	1.48	[illegible]
Other Real Estate Owned	0.75	0.41	0.22	0.03	0.01	0.19	0.35	1.97
Restructured Loans	-0.12	0.00	0.03	0.02	0.01	-0.03	0.00	-0.16
Equity Capital	1.64	0.15	0.33	0.17	0.14	[illegible]	[illegible]	[illegible]
Primary Capital	0.70	0.42	0.46	0.19	0.07	0.40	-0.08	[illegible]

*Multinational category represents national banks affiliated with seven multinational bank holding companies

Banking Research & Statistics

Aggregate Performance Statistics for National Banks by OCC District

(Data through March 31, 1991)

	Northeastern	Southeastern	Central	Midwestern	Southwestern	Western	Multinational	Total
[illegible]								
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	49	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	4	[illegible]	1	0	[illegible]	1	0	[illegible]
[illegible]								
Year-To-Date								
Net Income	[illegible]	[illegible]	0.70	[illegible]	0.17	0.44	0.94	3.04
Net Operating Cash Flow	1.16	[illegible]	1.14	[illegible]	[illegible]	0.71	[illegible]	6.94
Net Interest Income	[illegible]	[illegible]	2.68	[illegible]	[illegible]	1.98	4.73	17.24
Noninterest Income	[illegible]	[illegible]	[illegible]	0.43	0.49	[illegible]	3.64	8.90
Noninterest Expense	[illegible]	[illegible]	[illegible]	[illegible]	1.36	1.84	5.62	17.88
Loan Loss Provision	1.31	0.71	0.47	0.12	[illegible]	0.30	1.39	4.53
Net Loan Loss	1.03	[illegible]	0.36	[illegible]	0.29	0.29	1.56	4.14
First Quarter								
Net Income	0.24	[illegible]	[illegible]	0.27	0.17	0.44	0.94	3.04
Net Operating Cash Flow	[illegible]	[illegible]	1.14	0.38	0.35	0.71	2.23	6.94
Net Interest Income	3.04	1.48	2.68	1.02	1.30	1.98	4.73	17.24
Noninterest Income	1.62	0.93	0.98	0.43	0.49	0.80	3.64	8.90
Noninterest Expense	3.42	2.36	2.31	0.96	1.36	1.84	5.62	17.88
Loan Loss Provision	1.31	0.71	0.47	0.12	0.22	0.30	1.39	4.53
Net Loan Loss	1.03	0.45	0.36	0.12	0.29	0.29	1.56	4.14
Performance Ratios (%)								
Year-To-Date								
Return to Equity	4.34	[illegible]	13.91	[illegible]	7.14	14.25	11.93	10.02
Return to Assets	0.25	0.42	0.97	[illegible]	0.45	0.99	0.65	0.62
Net Interest Income to Assets	3.15	3.66	[illegible]	3.53	3.49	4.41	3.27	3.50
Loss Provision to Assets	1.36	[illegible]	[illegible]	[illegible]	0.59	0.68	0.96	0.92
Noninterest Income to Assets	1.68	1.37	[illegible]	1.49	1.31	1.79	2.51	1.81
Noninterest Expense to Assets	3.54	[illegible]	[illegible]	3.33	3.65	4.11	3.88	3.63
Real Estate Loans to Loans	40.40	47.36	[illegible]	[illegible]	38.83	45.63	35.90	39.44
Noncurrent Loans to Loans	6.32	[illegible]	[illegible]	1.81	3.76	2.74	5.56	4.32
Noncurrent RE Loans to RE Loans	9.15	[illegible]	[illegible]	[illegible]	5.45	2.88	6.99	5.59
Loss Reserve to Loans	3.39	[illegible]	[illegible]	1.96	3.07	2.21	2.94	2.63
Loss Reserve to Noncurrent Loans	53.70	69.71	[illegible]	105.47	81.79	80.80	52.94	60.75
Net Loan Loss to Loans	1.67	1.11	[illegible]	[illegible]	1.56	0.91	1.53	1.30
Loss Provision to Net Loan Loss	127.54	148.57	[illegible]	[illegible]	74.92	104.81	89.19	109.61
Equity Capital to Assets	5.91	[illegible]	7.11	6.89	6.44	7.05	5.47	6.27
Primary Capital to Assets + Reserves	8.12	8.10	8.14	8.09	7.88	8.77	7.73	8.04

Banking Research & Statistics

Joint Statement on Supervisory Policies on Extensions of Credit to Sound Borrowers

Recent credit problems have underscored the importance of prudent lending practices to the overall safety and soundness of the nation's financial system.* The emergence of credit problems in a number of sectors of the economy has prompted many depository institutions to review their lending practices as well as their capacity to meet credit demands. Many institutions have wisely tightened credit standards where such standards had become too loose. Others have reduced the pace of lending in response to the need to shore up their capital positions and strengthen their balance sheets.

It is possible, however, that some depository institutions may have become overly cautious in their lending practices. In some instances this caution has been attributed to concerns on the part of lenders that the regulators of depository institutions are applying excessively rigorous examination standards.

The federal banking and thrift regulators do not want the availability of credit to sound borrowers to be adversely affected by supervisory policies or depository institutions' misunderstandings about them. As a result, the agencies today are issuing a series of guidelines and statements that are intended to clarify regulatory policies in a number of areas and reduce concerns depository institutions may have about extensions of credit to sound borrowers. Specifically, the guidelines and statements released today: (1) encourage enhanced disclosure to the public, (2) facilitate extensions of credit to sound borrowers and the workout of problem loans, and (3) better assure sound assessments of the value of real estate by depository institutions and federal examiners.

Recent concerns related to a tightening of credit have focused the agencies' attention on regulatory policies and their effects on institutions' willingness to extend new credit and to work with troubled borrowers. The guidelines and statements released today, which have been under development for some time, are not intended, nor are they expected, to "solve" all credit availability problems. When combined with other steps that have been taken (such as lower money market interest rates and changes in reserve requirements), these initiatives should help facilitate prudent credit extensions to sound borrowers.

Enhanced disclosure will help to ensure that the public is better informed about the nature of institutions' portfolios. The new guidance recently issued by the Office of the Comptroller of the Currency (OCC) on suggested disclosures of more detailed information about nonaccrual loans in public financial statements, and recent banking agency guidelines on Highly Leveraged Transactions, should help by differentiating among broad groups of assets with varying degrees of risk.

Depository institutions have traditionally worked with their borrowers who are experiencing problems. In the current economic environment, it is especially important for institutions to avoid shutting off credit to sound borrowers, especially in sectors of the economy that are experiencing temporary problems.

Consistent with sound banking practices, depository institutions, including those with low capital positions, should work in an appropriate and constructive fashion with borrowers who may be experiencing temporary difficulties. Such efforts may include reasonable workout arrangements or prudent steps to restructure extensions of credit. Institutions that have in place effective internal controls to manage and reduce excessive concentrations over a reasonable period of time need not automatically refuse credit to sound borrowers because of the borrower's particular industry or geographic location.

The documents released today by the federal bank and thrift regulatory agencies aim to facilitate the workout of problem loans by addressing the income accrual treatment of formally restructured debt and acquired nonaccrual loans consistent with generally accepted accounting principles. Further, there is a clarification of the accounting treatment of multiple loans to a single borrower when some, but not all, of the loans to the borrower are troubled.

The agencies have also clarified when payments may be recognized as income on a cash basis for loans that

*The Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board (FRB), and the Office of Thrift Supervision (OTS) issued this joint statement on March 1, 1991. It was designed to clarify certain regulatory and accounting policies and to reduce concerns depository institutions may have about extensions of credit to sound borrowers.

[illegible]. In addition, the agencies [illegible] guidelines that address how institutions [illegible] loans that have been partially charged off.

[illegible], the agencies are also clarifying their policies on the supervisory valuation of real estate. The policies provide that the evaluation of loan loss reserves or net carrying values for real estate loans should reflect a realistic market analysis and not be based solely on liquidation values.

Enhanced Disclosure to the Public

Disclosure of Nonaccrual Loans

Nonaccrual loans vary widely with respect to their quality and cash generating capacity. Consequently, the simple total of such loans on an institution's books may not be a good indicator of the institution's financial position. One method to address this is to provide more information to the public on these assets. For example, useful supplemental disclosures might include information on the amount of charge offs taken on nonaccrual loans, the amount of cash payments received on these assets, and the portion of these loans that generate substantial cash flow. The OCC recently issued a Banking Bulletin that contains suggestions for the voluntary disclosure of additional information on nonaccrual loans. The federal regulatory agencies fully support the voluntary disclosures of the type suggested by the OCC and described in the attached statement.

Disclosure of Highly Leveraged Transactions (HLTs)

The federal banking agencies have previously developed a uniform supervisory definition for HLTs. The purpose of the definition is to provide a consistent means to monitor loans to HLT borrowers. The agencies have recently provided additional guidance to examiners and bankers on the application of this definition. This guidance stresses that the HLT designation does not imply a supervisory criticism of the credit.

The guidance also makes clear that certain extensions of credit, such as loans to debtors-in-possession (DIPs), do not fit the definition of HLT loans and should not be so reported. The criteria for the removal of a loan from HLT status have been expanded in the attached [illegible]. The agencies will continue to review these criteria to determine if other steps are warranted in view of the characteristics and performance of HLT credits, including the quality and reliability of the borrower's cash flow.

Other Lending Issues

There appears to be some concern that any new lending by institutions that fail to meet minimum capital requirements will result in supervisory criticism. While it is essential that depository institutions that fail to meet minimum capital standards take effective and timely steps to address this deficiency, such institutions are not necessarily required to cease prudent, low-risk lending activities. Institutions should attain capital compliance in a prudent manner that strengthens their financial conditions. Institutions that seek to improve their capital-to-assets ratios through shrinking their balance sheets should avoid actions that raise their risk exposure, such as the sale of all high-quality assets or of core deposits. Such actions by themselves, or the refusal to lend to sound borrowers, fail to achieve the important objective of improving the quality of undercapitalized institutions' portfolios.

The agencies share common procedures to address capital deficiencies at depository institutions. In general, each agency requires such institutions to prepare a plan that details the steps they will take to attain the minimum capital levels. Approved plans generally do not preclude a continuation of sound lending activities, including prudent steps to work with borrowers encountering financial difficulties.

Similarly, there appears to be some concern that institutions with loan concentrations are automatically turning down good loans. The benefits of adequate portfolio diversification are well recognized by depository institutions and their regulators. Although the regulatory agencies have not established rigid rules on asset concentrations, they are in agreement that, as a matter of sound operating policy, depository institutions should establish and adhere to policies that control "concentration risk."

Institutions that have in place effective internal controls to manage and reduce undue concentrations over a reasonable period of time need not automatically refuse credit to sound borrowers. The purpose of institutions' policies should be to improve the overall quality of their portfolios. The replacement of unsound loans with

[illegible]

The statement entitled "Supervisory Guidance Regarding the Definition of Highly Leveraged Transactions (HLTs)" is [illegible]

sound loans can enhance the quality of a depository institution's portfolio, even when concentration levels are not reduced.

Recognition of Income on Certain Nonperforming Loans

Questions have been raised regarding the recognition of income on loans that have been partially charged off. This subject is not explicitly addressed in the agencies' regulatory reporting requirements. The agencies wish to clarify that payments can be recognized as income on a cash basis for loans that have been partially charged off, without requiring that the prior charge off first be recovered, so long as the remaining book balance is deemed fully collectible.

The agencies, along with the Securities and Exchange Commission (SEC), each plan to solicit public comment on proposed guidelines which would allow certain nonperforming loans to be placed back on accrual status once the loans are reduced to an appropriate level through charge offs.* Any formal guidance issued will be based on the comments received from the public and ongoing discussions between the agencies and the SEC.

The agencies have released today supervisory guidance on a variety of other issues related to nonaccrual assets and formally restructured debt. These guidelines include a discussion of regulatory requirements related to cash basis income recognition, multiple loans to one borrower, and the acquisition of nonaccrual assets.

Valuation of Real Estate Loans

In recent months, there have been significant declines in real estate values in certain markets. In response to these declines examiners have reviewed the adequacy of institutions' loan loss reserves and, where they believed it appropriate, have required additional reserves based on, in part, their estimates of real estate values.

These actions have focused attention on the techniques used to assess the value of real estate especially commercial real estate. It is important that valuation techniques reflect not only existing market conditions, but also reasonable expectations of the property's performance in the market over time. The federal regulatory agencies are reiterating their policy on the assessment of real estate values and the establishment of loan loss reserves.

The basic thrust of this guidance is to ensure that income property loans not be assessed solely on the basis of liquidation values but also on the income-producing capacity of the properties over time. Supervisory evaluations should take into account the lack of liquidity and cyclical nature of real estate markets and the temporary imbalances in the supply and demand for real estate that may occur.

Review of Supervisory Findings

The agencies want to make clear their policy that any institution may request a review of any major decision reached as part of the supervisory process, including those related to asset classification and required reserve levels.

**The Federal Financial Institutions Examination Council requested comment on this issue entitled "Reporting Standard Concerning the Return of a Loan with a Partial Charge off to Accrual Status," on March 14 1991 It appeared in the Federal Register on March 18 (56 FR 11441 46)*

Bank Consolidation: Past Trends and Future Prospects

Introduction

The structure of the U.S. banking system has changed significantly since 1980. Consolidation within the banking industry has resulted in fewer banks and separately owned banking companies, a higher concentration of assets in large banks and multibank holding companies, and an increasing number of bank holding companies operating in two or more states.

Consolidation will certainly continue into the 1990s. Bank holding companies will continue to merge their separately chartered bank affiliates into branching networks due to the recent easing of restrictions on geographic expansion in many states. Separately owned institutions will continue to combine their operations to cut costs and redistribute capital. Also, bank failures could remain high, providing a large pool of assets to be acquired by healthy banking companies.

How those trends will shape the structure of banking in the 1990s is not so easy to predict, however; the various aspects of consolidation have different, and sometimes offsetting, impacts on bank structure. Combining banks owned by the same holding company results in fewer banks, concentrates assets in larger institutions, and has no impact on the number of separately owned banking companies. Combining separately owned banking companies concentrates assets in fewer companies, but need not lead to fewer banks and a higher concentration of assets in larger banks. Bank failures can have multiple affects, depending on how they are resolved and whether they promote any new banks to be chartered.

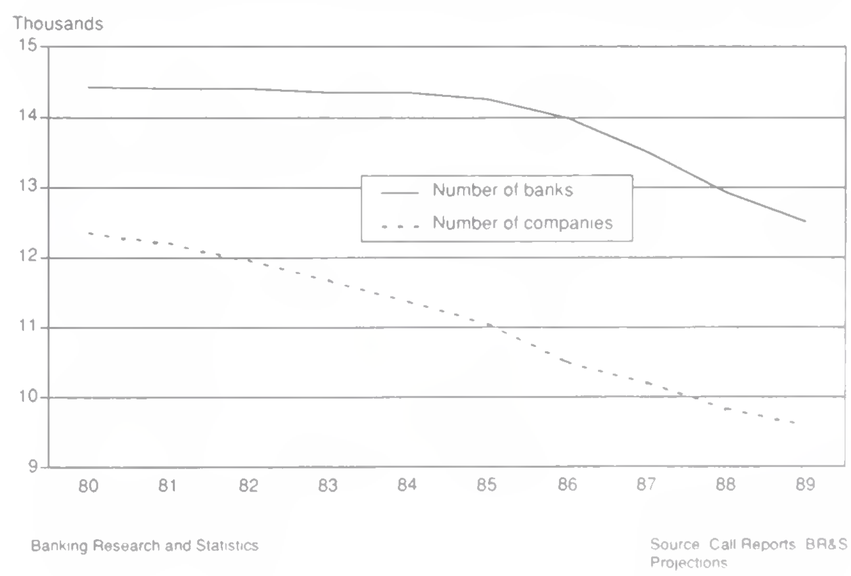
To assess the potential impact of those contravening trends, the Office of the Comptroller of the Currency's (OCC) Banking Research and Statistics Division recently analyzed consolidation trends during the 1980s. Those findings were used to project the number of banks likely to be in operation in 1992 and 1995, including their size, holding company affiliation, and charter type. Projections were made for each state and the District of Columbia, based on current intrastate and interstate banking laws, and an assessment was made of the extent to which the consolidation trends during 1986-1989 are likely to change in the 1990s. The state-by-state projections then were aggregated to derive national totals.

The projections for each state and time period — year-end 1989 through year-end 1992, and year-end 1992 through year-end 1995 — involved five separate estimates. First, the extent to which holding companies would combine their separately chartered affiliates into branches (within-company mergers) was estimated. Second, the extent to which separately owned banks within the same state would combine (unaffiliated mergers) was projected. Third, the combined impact of bank failures and new bank charters was estimated. Fourth, combinations of banking companies across state lines into multistate holding companies were estimated. Finally, the distribution of assets among surviving banks and banking companies was projected.

Consolidation Trends in the 1980s

Between the end of 1980 and the end of 1989, the number of insured commercial banks operating in the United States fell from 14,416 to 12,524 while the number of separately owned banking companies dropped from 12,357 to 9,584.

Number of Banks and Banking Companies, 1980-89



Over that same period, the share of total commercial bank assets held by banks with $1 billion or more in assets rose from 61 percent to 70 percent, the share of total bank assets held by multibank holding companies increased from 36 to 75 percent; and the number of holding companies operating banks in more than one state increased from 9 to 156.

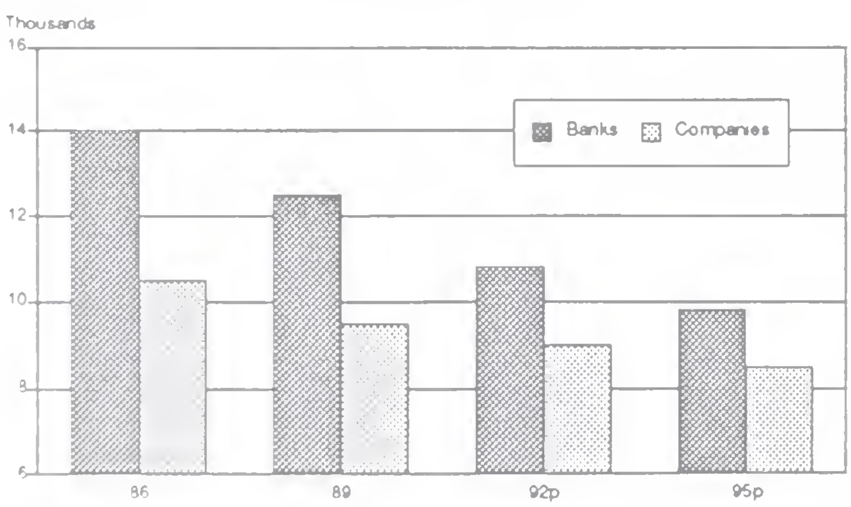
Comparisons between 1980 and 1989 mask some contrasting trends that have developed since 1986 and are likely to continue into the 1990s. Between 1980 and

1986, most holding companies operated the banks they acquired as separately chartered institutions. Therefore, the number of banks fell by 406 during the period, while the number of separately owned banking companies — independent banks, one-bank holding companies and multibank holding companies — dropped by 1,839. Since 1986, however, holding companies have increasingly consolidated their existing operations and new acquisitions into fewer, separately chartered banks. As a result, the number of banks decreased by 1,486 between 1986 and 1989, while the number of banking companies fell by only 934. In fact, more than two-thirds of the decrease in banks since 1986 is due to mergers in which a multibank holding company consolidated two or more of its affiliated banks into branches of a common bank.

Consolidation in the 1990s

The consolidation trends exhibited in the 1980s, particularly between the end of 1986 and the end of 1989, are likely to continue into the 1990s. State-by-state projections suggest that the total number of banks in the U.S., which fell 10.5 percent between 1986 and 1989, could decline by 13 percent by year-end 1992, and could drop an additional 9 percent by the end of 1995. The number of separately owned banking companies, which dropped by 9 percent between 1986 and 1989, could fall 6.5 percent by the end of 1992, and could drop an additional 5 percent by year-end 1995.

Number of Banks and Banking Companies, 1986-1995 (actual and projected)



Banking Research and Statistics

Source: Call Reports, BR&S Projections

The share of total commercial bank assets held by banks with $1 billion or more in assets, which increased from 66 to 70 percent between 1986 and 1989, could rise to 73 percent between 1989 and 1992, and increase to 76 percent between 1992 and 1995. The number of multistate companies, which increased from [illegible] to [illegible] between 1986 and 1989, could increase to approximately 200 by the end of 1992, and could rise to about [illegible] by year-end 1995.

Within-Company Mergers A Major Factor in Consolidation

Within-company mergers are likely to account for around two-thirds of the drop in banks between the end of 1989 and the end of 1995, just as they did between 1986 and 1989. Within-company mergers could result in a decline of about 1,100 banks between 1989 and 1992, and an additional decline of about 700 banks between 1992 and 1995.

Projections of within-company mergers in each state equal a specified fraction of the potential for such mergers that existed at the end of 1989. The size of the fraction varies by state and time period depending on the intrastate branching laws of each state, the length of time those laws have been in effect or the length of time until they are scheduled to change, the likelihood of approval of cross-county branching applications, and past trends in within-company mergers in the state.

Much of the projected drop in banks due to within-company mergers will be in states that have recently eased long-standing branching restrictions, as those restrictions primarily account for the formation of extended multibank holding company networks. Texas, Illinois, Wisconsin, Minnesota, Michigan, Florida, Georgia, Indiana, and Missouri each could lose at least 40 banks by 1992, and at least 20 more by 1995 as a result of within-company mergers.

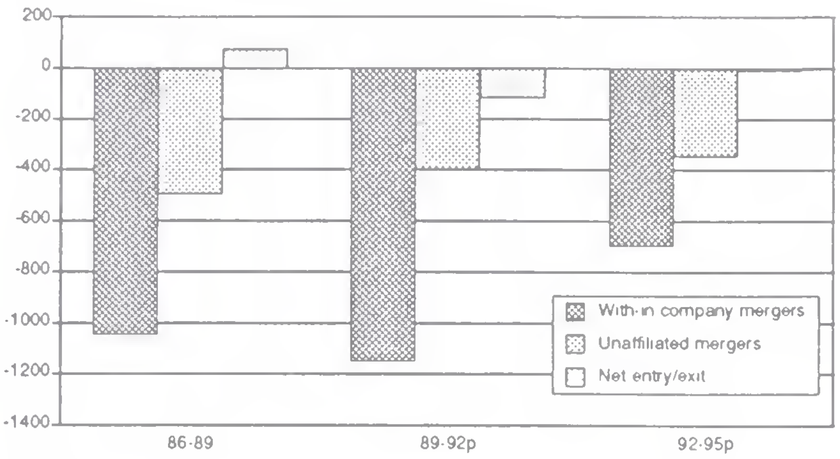
Unaffiliated Mergers also a Factor in Consolidation

As was the case between 1986 and 1989, unaffiliated mergers will likely continue to be the second largest factor in reducing the number of banks, and the primary factor in reducing the number of separately owned banking companies. Unaffiliated mergers could result in a loss of about 400 banks by the end of 1992 and around 350 banks by the end of 1995, accounting for approximately one-third of the overall drop in the number of banks during each three-year period.

The projections of unaffiliated mergers differ among states based on factors such as the number of banks in the state per 100,000 in population, the amount of merger activity over the preceding three years relative to the number of banks in the state, the existence of attractive merger partners in the state, the capital strength of potential buyers, and the likelihood of improvement or deterioration in the economy of the state. Based on those factors, Texas could lose the most banks — 34 by year-end 1992 and 29 more by year-end 1995. Illinois, Florida, California, and Oklahoma, the other states likely to experience the most unaffiliated

mergers, could all lose at least 25 banks between 1989-1992 and 20 or more between 1992-1995.

Consolidation Activity by Type
(actual and projected)



Banking Research and Statistics

Source: Call Reports, BR&S Projections

New Charters Lessen Impact of Bank Failures

Bank failures and new bank charters are two other factors which affect the structure of the banking industry. Though often independent events, it is important to consider their combined net impact on the number of banks and banking organizations. For example, consider the nearly 600 commercial bank failures between 1986 and 1989, the highest three year total since the Great Depression. Yet the impact of those failures on the aggregate number of commercial banks was more than offset by the number of new bank charters; the surge in new charters may be explained by booming economies and population growth in some states, and the opening of markets due to failures in other states. Hence the excess of new charters over bank failures resulted in a net entry of 62 banks between 1986-1989 for the country as a whole.

Projections of the net effect caused by bank failures and new charters in each state indicate that for the U.S. as a whole, failures could exceed new charters by about 120 between 1989-1992, and they could be about equal between 1992-1995.

The state-by-state projections are based on an assessment of the extent to which failure and chartering trends during 1986-1989 will continue in the 1990s. Factors such as the capital strength of potential failure candidates, the likelihood of improvement or deterioration in the state's economy, the number of banks per 100,00 population, and expected population growth entered into the state-by-state projections. In several states that had a large net entry of banks between 1986-1989 — Connecticut, New Jersey, Pennsylvania, Georgia, and Alabama, net entry could fall by at least 75 percent between 1989-1992. Moreover, Massachusetts, which had a net entry of banks in the earlier period, could experience a net exit of banks between 1989-1992.

Implications

There can be little doubt that basic consolidation trends in banking that have been evident in recent years will continue in the 1990s. With branching restrictions being lowered, consolidation within multibank holding companies will, as in the past three years, cause a decline in the number of separately chartered banks in this country. Mergers between unaffiliated banks will also contribute to the drop in the number of U.S. banks, but in the presently harsh environment in which banks are operating, a slow rate of these mergers is likely. Capital constraints, tarnished and uncertain asset quality, and the relatively low prices on bank equities will combine to keep some previous merger participants on the sidelines.

The harsh environment in which banks are operating will also result in the number of banks failures remaining high and slow applications for new banks charters. Combined, these factors will lead to a net exit of banks in the 1990s.

Richard S. Nisenson
Banking Research and Statistics

Anti-Money Laundering Regimes in Europe and Canada

Introduction

Money laundering usually conjures up images of exotic locations, silk-suited financial intermediaries, and Rolex-wearing drug lords. The environment in which "hot money" or drug profits are transformed into "clean" legal tender or assets is perceived as glitzy and fast-paced, colored in shades of Miami Vice flamingo pink. What is often missed is the tedious filling out of Currency Transaction Reports (CTRs) by bank clerks in the United States, long hours of negotiations between teams of experts to create multilateral anti-money laundering agreements, and the methodical work of building cases against suspected money launderers that cut across international frontiers.

Measures other countries are taking to prevent or root out money laundering operations are also sometimes overlooked. The U.S. is not alone in perceiving the threat of money laundering to the prudential nature of its financial system. The twelve member nations of the European Community, Switzerland, and Canada represent three cases where other governments are making an effort to go after the key link in the international illicit drug trade — the profits. A new international anti-money laundering regime is emerging, based on the idea that if drug traffickers are not allowed to launder their profits into clean legal tender or assets, they cannot enjoy the ill-gotten fruit of their efforts, and the attraction to this commerce will be considerably diminished.

The global trade in illicit drugs that emerged in the late 1970s and 1980s generated billions of dollars in profits. The Financial Action Task Force, which included the U.S. and most European countries, Japan, and Australia, estimated that this drug trade yielded upwards of $300 billion in proceeds at year-end 1990. Although slightly more than a third of that total comes from profits generated in the U.S., it is clear that the international magnitude of the drug trade requires a multilateral response.[1]

Money Laundering Laws in the U.S.

Today in the U.S., financial institutions, automobile dealerships, jewelry stores, casinos, and other businesses must report suspicious financial transactions. However, although the Bank Secrecy Act of 1970 first instituted the requirement to file CTRs for any transaction over $10,000, it was not until the Anti-Drug Abuse Act of 1986 that money laundering become a criminal act.[2] The 1986 act required banking regulators to proscribe regulations requiring banks to establish and maintain procedures designed to assure and monitor compliance with the Bank Secrecy Act.

The U.S. tightened its anti-money laundering laws with the Anti-Drug Abuse Act of 1988, authorizing the Treasury Department to target financial institutions in specific geographic locations and to monitor transactions that involve less than the current CTR $10,000 cash threshold. The 1988 act also enhanced penalties for money laundering. Additionally, it included a limited exception to the notification requirements of the Right to Financial Privacy Act (RFRA) to facilitate criminal investigations of transactions involving financial institution insiders.[3]

The Anti-Drug Abuse Act of 1988 also contained a provision to promote international efforts to combat money laundering. Introduced by Massachusetts Senator John F. Kerry, the "Amendment to Restrict International Laundering of U.S. Currency" requires the Treasury Department to negotiate with financial supervisory agencies and other officials of foreign countries to establish an international agreement to ensure adequate recordkeeping of large U.S. currency transactions by foreign banks and nonbanks. It also called for agreements to make such records available to U.S. law enforcement officials.

[1] United States Department of State, Bureau of International Narcotics Matters, *International Narcotics Control Strategy Report, March 1991* (Washington, D.C.: U.S. Department of State, March 1991), p. 16.

[2] Before 1970, Congress passed a law requiring financial institutions to report unusual currency transactions over $2,500 (31 U.S.C. 427). However, bankers found the law to be vague and confusing. Since there were no penalties for noncompliance, it was also largely ineffective. Out of concern about the widespread abuse of secret bank accounts to, among other things, launder money from illicit activities, Congress responded by enacting the Bank Secrecy Act of 1970. Special thanks to Larry Senter of the OCC's Compliance Department for this information.

[3] Bruce Zagaris, "Dollar Diplomacy: International Enforcement of Money Movement and Related Matters — A United States Perspective," reprinted from *The George Washington Journal of International Law and Economics*, Vol. 22, Number 3, 1989, p. 4[illegible].

Multilateral Efforts to Combat Money Laundering

As the U.S. was moving to tighten its money laundering laws, efforts were underway, clearly indicating a shared international concern. Countries like Australia, France, and Luxembourg have enacted laws similar to those in the U.S. The United Nations 1988 Vienna Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the formation of the Financial Action Task Force, and the signing of bilateral accords against money laundering, such as that signed between the U.S. and Venezuela in 1990, are other examples of international efforts to combat money laundering.[4]

Another example of international cooperation is the Basle Committee, which produced the Basle Declaration of 1988 on prevention of the criminal use of the banking system to launder money. This declaration has four basic principles:

- make reasonable efforts to determine the true identity of all customers requesting the services of financial institutions;
- take particular care to identify the holders of all accounts and those using safe-custody facilities;
- institute effective procedures for obtaining proof of identity from new customers; and
- refuse to conduct significant business transactions with customers who fail to provide evidence of their identity.

The Basle Declaration reflected a growing consensus among developed countries that an international legal regime was needed to deal with the drug money laundering problem. Many of the concerns addressed in the U.S.'s 1986 and 1988 Anti-Drug Abuse acts were evident in the declaration. However, most European nations and Japan remained opposed to compulsory CTRs at the $10,000 level out of concern about the effectiveness of CTRs in detecting and preventing money laundering operations. Instead, they have adopted other measures to deal with money laundering.

[illegible]

Survey of Money Laundering Laws in Selected Countries

Country	Is Money Laundering A Crime	CTRs Required
Austria	Legislation pending	yes
Australia	yes	yes
Canada	yes	yes
Colombia	no	yes
France	yes	no
Germany	no	yes
Japan	Legislation pending	Legislation pending
Luxembourg	yes	yes
Spain	yes	no
Switzerland	yes	yes
United Kingdom	yes	no
United States	yes	yes

Source: *International Narcotics Control Strategy Report* (March 1991) and *International Enforcement Law Reporter* (various issues)

The European Community

The European Community consists of these member countries: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom. These countries have some of the world's largest banks and most sophisticated financial systems. Additionally, Luxembourg's economy is largely based on international private banking, which has been protected by strong bank secrecy laws. These factors have drawn significant international narco-profits to the European Community. In the past, heroin money dominated, largely coming from Middle Eastern and Southwest Asian sources, but in the late 1980s there has been a growing penetration of the EC by South American cocaine cartels. As the Community's members move closer to a single unified market by January 1, 1993, concern is rising about the potential threat of the illicit drug trade and money laundering.

It is estimated that around $10 billion worth of drug-dealing money enters into Europe's financial system annually.[5] This seepage of drug money led to an European Commission "Directive on Prevention of Use of the Financial System for the Purpose of Money Laundering." The directive was supported by the Common Position taken by the 12 Finance Ministers on December 17, 1990. At the time of the Common Position, which will force the 12 member governments to

[illegible]

pass laws against money laundering, only the United Kingdom, France, and Luxembourg had legislation dealing specifically with money laundering as a criminal activity; however, Spain has since joined these ranks.

The European Community's directive touches upon four key areas.[6] First and foremost, financial firms will have to "know the customer," which entails taking "reasonable measures" to discover the real identity of the person on whose behalf a transaction is conducted. The principle applies to any customer carrying out transactions involving more than ECU 15,000 ($20,400). Moreover, banks and other financial firms must notify their respective authorities (regulatory or criminal investigative) of all suspicious transactions. This will mean that financial institutions will cooperate with the authorities responsible for combatting money laundering by furnishing them, at their request, with all necessary information, in accordance with the procedures established by the applicable national legislation. The information may be used only to fight money laundering unless Member States state otherwise.

The directive also calls on banks and financial institutions to establish internal procedures to help personnel to detect and prevent laundering activities. Special training programs for bank staff to help them recognize activities which may be related to money laundering as well as how to proceed in such cases are examples. Additionally, employees of the bank or financial institution that provide information to the authorities will be protected from any cases brought against them for violation of bank secrecy laws.

The EC directive also aims to ensure that credit and financial institutions keep a copy of references used for identification for a period of at least five years after the relationship with the customer has ended. In the case of cash transactions, the supporting evidence and records consisting of the original documents or copies admissible in court proceedings must also be kept for at least five years after the execution of the transactions.

Under the Finance Ministers Common Position, Member States are to institute laws, regulations, and administrative decisions necessary to comply with the directive before January 1, 1993. As of June 1991, legislation is already being considered in a number of countries. For example, in February 1991 the Italian Senate passed its version of the Anti-Money Laundering Decree Law, entitled "Limitations on the Use of Currency in Transactions." The law establishes a limit on cash transactions of 20 million lire ($17,500). After 20 million lire, all transactions must be made in traceable instruments. With a 20 million lire ceiling, Italy would be in full compliance with the proposed EC ceiling.

France has been one of the most active EC members in the fight against money laundering. It chaired the Financial Action Task Force during that body's first two years and is one of the few EC states that ratified the U.N. Vienna Convention. Under French law, money laundering is a criminal act requiring disclosure of beneficial owners of accounts and the reporting of suspicious transactions by banks and financial nonbanks. In 1990, the French government created special anti-money laundering units and judges were allowed to enforce asset confiscation decisions by foreign courts.

Luxembourg adopted a strong anti-money laundering law in July 1989, which provides for sentences of up to five years and fines of as much as $1.25 million as well as seizure of all proceeds for those who knowingly launder drug money or those whose negligence allows money to be laundered.[7] Banks are to know all depositors and refrain from opening accounts for those whom they cannot identify. Banks must closely monitor accounts for unusually large transactions, and must follow the "know your customer" principle for substantial gold and other precious metal transactions (valued at $10,000 or more) for individuals who are not account holders.

The measure's key aim is to make bankers in Luxembourg cautious about the way they handle transactions in which the true beneficiary is concealed by layers of trustees and shell corporations. The bank is now legally obligated to know the full chain of connections between the client and the source of funds. These measures also apply to lawyers involved in the creation of shell companies and the movement of drug money.

In the U.K., money laundering was criminalized under the Drug Trafficking Act of 1986. British law requires

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[6] Much of this information is drawn from the "Common Position Adopted by the Council on 14 February 1991 with a View to Adopting a Council Directive on Prevention of Use of the Financial System for the Purpose of Money Laundering," European Communities, The Council, Brussels, 14 February 1991. The author also held a discussion on the EC's anti-money laundering efforts with Jose-Luis Rosello, Principal Administrator, Banking Division, of the Directorate-General — Financial Institutions and Company Law at the Commission of the European Communities, Brussels, April 29, 1991.

[7] The July 1989 Law of the Grand Duchy of [illegible] amendment to the Modified Law of 19 February [illegible] bourg penal code [illegible] cally addressed the problem of money [illegible] pertains to the penalties. See Ministère d'Etat [illegible] Presses, *Note Documentaire* [illegible] 1990, p. 1.

financial institutions to report suspicious transactions and protect them from prosecution under bank secrecy laws. The British government has also sought to improve supervision, investigations, and training in its Caribbean dependencies of Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat, and the Turks and Caicos Islands.

Spain is another EC member actively moving against money laundering. A signatory of the U.N. Vienna Convention, Spain has made money laundering a crime and its banks are actively implementing a know-your-cutomers program. According to the Association of Spanish Bankers, well over half of the country's banks, and all of the major banks, have established record-keeping procedures that conform to the code of conduct earlier released by the Association. These records on financial transactions can be accessed for criminal investigations through the courts.

Switzerland

As one of the world's most sophisticated financial centers with well-known facilities for private banking, Switzerland has played an important role as an offshore financial center for capital from around the world for many decades. Although most of the capital came from legal sources, it has also had the image of being a center for money laundering.[8]

This image is increasingly inaccurate as the Swiss government and bankers began to take measures to detect and prevent drug money laundering operations in the late 1980s and early 1990s. Cognizant of the Basle Committee's declaration and of the heightened international efforts to go after the profits of drug dealers, the Swiss implemented anti-money laundering legislation and the Swiss Bankers Association established a "due diligence" convention which requires bankers to verify their customer's identity. When in doubt about customer identity, bankers must obtain documentation identifying the beneficial owner of the account.

The new legislation, which went into effect in August 1990, criminalizes money laundering and enforces the due diligence convention. Anyone who fails to exercise due diligence when opening new accounts and identifying beneficial owners can be prosecuted and imprisoned. Swiss supervisory authorities interpret this due diligence provision to require attorneys to name (with a few narrowly defined exceptions) the beneficial owners of accounts they set up.[9] Prior to this, lawyers only had to declare they had verified owner identity.

Swiss anti-money laundering laws were strengthened in May 1991 when the Federal Banking Commission announced that Form B, or numbered accounts, would be abolished. As noted by one analyst, the commission abolished Form B accounts as they "provided an important loophole because lawyers and fiduciary trustees were able to deposit money without identifying their clients."[10] With this ruling, Form B accounts will not be opened after July 1, 1991, and all existing account holders must be identified by September 30, 1992. Banks will be required to terminate the relationship if the depositor refuses to name the account's clients.

Switzerland has also signed a Mutual Legal Assistance Treaty with the U.S., allowing a venue for the exchange of financial data such as CTRs. The Swiss verify the identity of clients conducting cash transactions over SFr 100,000 ($72,370). According to the annual State Department *International Narcotics Control Strategy Report*, U.S.-Swiss cooperation is "excellent." For example, a number of suspicious accounts have been identified and frozen by the Swiss.

Canada

Although the international drug trade in Canada is not highly publicized in the U.S., it generates an estimated $10 billion annually.[11] In 1988 Canada responded to this problem, enacting The Proceeds of Crime Act. This law made money laundering a crime and also allowed banks and other financial institutions to report suspicious transactions to enforcement agencies without risk of liability to customers for breach of client confidentiality.

Other measures to combat money laundering followed. In October 1990, Canada's Solicitor General issued a report indicating that the Free Trade Agreement between the United States and Canada, which was signed in 1988, had inadvertently proven helpful to money launderers. The Solicitor General noted that the "liberalization of trade restrictions and limits to government regulation will make money laundering much

[8] [illegible]

[9] State Department, *International Narcotics Control Strategy Report*, p. 380.

[10] Alan Riding, "New Rule Reduces Swiss Banking Secrecy," *The New York Times*, May 6, 1991, p. D1.

[11] State Department, *International Narcotics Control Strategy Report*, p. 375.

easier by eliminating barriers, while making the transactions seem much more commonplace."[12]

Canadian and U.S. authorities addressed this potential problem by the signing of the Mutual Legal Assistance Treaty (MLAT) in 1989, making it legal for Canada and the U.S. to share financial information on drug suspects. Passage of Canada's Bill C-89 reinforced this position by creating mandatory, uniform standards for record-keeping and customer identification for banks and non-bank financial organizations, including records of large cash transactions (C$10,000).

Conclusion

Although differences remain between countries in their approaches to combating money laundering, movement toward a common anti-money laundering international legal regime is taking place. Considerable progress has been made in Europe and North America and there is evidence that drug money laundering operations are moving out of some traditional banking havens to a second tier of banking systems. According to the *International Narcotics Control Strategy Report*, this is because "new laws requiring disclosure of beneficial owners of accounts and other data recording requirements ... [have] effectively removed many historic barriers to money laundering investigations."[13] Commercial banks are also more diligently attempting to detect and prevent money laundering operations. While drug money laundering operations are likely to continue, considerable progress is being made to create an effective international regime to combat money laundering.

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[12] Clemens Kochinke, "U.S.-Canada Free Trade Agreement Promotes Money Laundering," *International Enforcement Law Reporter*, (November 1990), p. 380.

[13] State Department, *International Narcotics Control Strategy Report*, pp. 16-17.

Guidance on International Bank Credits

I wish to bring to your attention a change in the Interagency Country Exposure Review Committee's (ICERC) approach to the categorization of performing short-term trade and bank credits (in the latter case, usually interbank and money market lines).

After reviewing the recent history and current developments, the ICERC has concluded that for these particular credits granted by United State banks to entities in foreign countries, the default risk is usually low. This is due in part to the importance those countries place on maintaining access to these kinds of credits, and the performance record of such credits supports the judgment of low default risk. From the standpoint of ICERC procedures, when there is not specific evidence of performance problems with such trade and bank credits, an ICERC categorization of them as only one grade better than the country's main short- and long-term debt designation may be too severe and may be discouraging some legitimate and less risky transactions.

Therefore, the ICERC has decided that, subject to a case-by-case, country-by-country assessment, performing trade and performing bank credits will presumptively be accorded a categorization two grades better than the country's main short- and long-term designation. (For example, short- and long-term credits for country A are Value Impaired, while performing trade and performing bank credits are neither classified nor criticized.)

The ICERC plans to apply this approach in its future country exposure reviews and make adjustments in existing ratings where appropriate, as it considers individual countries. We believe this change will enhance the possibilities for additional, low-risk lending activity and/or legitimately improve the quality of existing asset portfolios.

Questions or comments can be directed to the OCC's International Banking and Finance Department.

On April 12, 1991, Jon K. Hartzell, Deputy Comptroller for International Banking and Finance, sent this memorandum, entitled "Performing Trade and Performing Bank Credit Categorizations," to the chief executive officers of national banks with international assets.

Recent Corporate Decisions

On January 11, 1991, the OCC denied a request from a foreign bank to establish a federal branch in New York City. After reviewing the bank's operating plan, the OCC concluded that the bank's proposed level of capitalization and management's lack of international experience were inadequate for the competitive New York market. Thus, the OCC determined that the bank failed to demonstrate that the proposed branch would have reasonable prospects for success.

On January 18, 1991, the OCC approved a new bank charter for Founders National Bank to be located in Los Angeles, California. The bank was chartered to acquire the failed Founders Savings & Loan Association, a minority-owned thrift institution located in Los Angeles. The transaction was part of a Resolution Trust Corporation program giving preference in bidding for failed savings and loans previously owned by minority groups to other minority groups. This transaction was the first minority thrift resolution proposal involving a national bank.

On January 29, 1991, the OCC conditionally approved the conversion of First Federal Savings and Loan Association, Columbia, Tennessee, into a national bank. The conditional approval, which occurred after the Office of Thrift Supervision (OTS) had approved the conversion, related to OCC's concern with the institution's Community Reinvestment Act (CRA) performance. Among other conditions, the OCC required the institution to develop and submit a documented plan to the OCC to improve its CRA efforts.

On February 6, 1991, the OCC approved a customer bank communications terminal (CBCT) branch application for First City Texas-Austin, N.A., Austin, Texas. Despite the bank's CRA rating of "needs to improve," the OCC approved the application unconditionally because the applicants proposed to locate the CBCT in a low- to moderate-income community in Austin which had no banking facility and because the OCC received numerous public comments favoring the application. The OCC also found that, even though a satisfactory level of performance had not been achieved at the time of the decision, the bank was working to correct its CRA deficiencies.

On February 10, 1991, the OCC disapproved an application to convert a savings bank to a national bank. The condition of the thrift, determined by OCC, FDIC, and OTS examinations, was unsatisfactory: weaknesses in capital, asset quality, management, and compliance with CRA were so widespread that the OCC determined that conditional approval was unwarranted.

On February 12, 1991, the OCC approved a federal branch application for The Farmers Bank of China, Taipei, China. The branch, to be located in Seattle, Washington, will be the bank's first federal branch in the United States.

On February 15, 1991, the OCC denied a request from an organizing group to reconsider OCC's recision of its preliminary approval to charter a new bank. The OCC rescinded the approval because the organizers were unable to raise the capital to fund the new bank within the 18 month period required by the OCC. The OCC determined that this inability to raise capital reflected poorly upon both the skills of the organizing group and the market's perception of the proposed bank.

On February 15, 1991, the OCC granted conditional approval to Capital City First National Bank, Tallahassee, Florida, to establish a mobile CBCT branch. This was the first mobile CBCT branch to be approved by the OCC in Florida. The branch will operate only at locations that are legally permitted under federal and state law.

On February 15, 1991, the OCC also conditionally approved a mobile CBCT branch application for AmSouth Bank, National Association, Birmingham, Alabama. This was also the OCC's first mobile CBCT branch approval for Alabama.

On February 22, 1991, the OCC approved a request from Citizens National Bank of Wills Point, Texas, to perform a reverse stock split transaction to facilitate the issuance of additional stock undertaken under the bank's approved capital plan. This proposal involved a de minimus payout and was approved by 100 percent of the shareholders. It was *not* designed to freeze out minority shareholders.

This section contains summaries of selected corporate decisions completed during the first quarter of 1991. These cases, described for informational purposes only, are noteworthy because they represent issues of importance or unusual methods of accomplishing a particular expansion activity. Copies of the public sections of the applications may be obtained from the Communications Division of the OCC in Washington, D.C.

In January [illegible] 1991 the OCC denied a new bank charter application because of weaknesses in the banking experience of the proposed CEO and the apparent lack of familiarity of the other organizers with the bank's proposed operating plan. The OCC concluded that the group's proposal did not have a reasonable likelihood of success.

On February 27, 1991, the OCC denied a request to charter a national bank, filed by an existing company, because of various deficiencies. Although the proposal would have provided the company with a less expensive means of funding its mortgage lending activities, the OCC determined that the proposed level of capitalization was seriously inadequate for a new bank. Additionally, the organizers were not familiar with the bank's operating plan, the plan called for the excessive transfer of classified assets to the new bank, and the OCC considered the concentrated risk profile of the bank unacceptable.

On March 1, 1991, the OCC conditionally approved an application in which a federal thrift would convert to a national bank, First Bank, National Association, LaFollette, Tennessee. The OTS had approved the conversion on February 18, 1991. The OCC found several operational and policy deficiencies and compliance under CRA needed improvement. The conditional approval calls for these deficiencies to be corrected prior to conversion.

On March 25, 1991, the OCC denied a new national bank charter application because of weaknesses in the proposed operating plan and the insufficient banking experience of the proposed CEO. The OCC also found that the organizers unduly relied on a consultant to prepare the application and were not themselves sufficiently familiar with the bank's operating plan.

On March 25, 1991, the OCC denied a limited federal branch application filed on behalf of a foreign bank because of the unsatisfactory operations of the bank's existing state-chartered agencies.

On March 25, 1991, the OCC denied an operating subsidiary proposal from a liquidating bank. The bank proposed to participate as a general partner in development of raw land into residential lots. Although the bank argued that the proposal was necessary to protect its investment in the project, the OCC determined that the projected total cost of development was [illegible] the current value of the land. [illegible] for protective [illegible] real estate [illegible] not permitted for national [illegible]

On March 26, 1991, the OCC conditionally approved an application involving Santander National Bank, Bayamon, Puerto Rico. The application called for the conversion of a $2 billion federal thrift into a national bank. The OCC's concerns were met through a number of conditions imposed under the approval, the most significant of which requires a capital injection of $25 million prior to the thrift's conversion to a national bank.

On March 26, 1991, the OCC approved a federal branch application for the Bank of Communications, Shanghai, The People's Republic of China, to be located in New York City. This application will result in the opening of the bank's first branch in the United States. It will represent the second bank from The People's Republic of China to establish a banking presence in the U.S. (the first being Bank of China, which currently operates two federal branches in New York City and a limited federal branch in Los Angeles).

Corporate Decision Related to the Community Reinvestment Act*

On January 7, 1991, the OCC conditionally approved a CBCT application for Franklin National Bank, Franklin, Tennessee. The applicant's performance was considered less than satisfactory in determining community credit needs and marketing, in monitoring and analyzing the geographic distribution of credit provided by the bank, and in analyzing community development needs. The conditional approval required the bank to: document its efforts to identify community credit needs; develop a marketing plan to promote credit products and services; analyze the geographic distribution of credit extensions, denials and applications; develop a self-assessment plan of its CRA performance; document the bank board of directors' involvement in CRA; and review written policies and procedures to ensure the absence of any discriminatory practices. All conditions must be met prior to establishing the CBCT. Further, satisfactory CRA performance must be substantiated by an examination and a publicly available written evaluation.

On January 16, 1991, the OCC granted conditional approval to Capital Bank, National Association, Sylvania, Ohio, to relocate its head office. The OCC's evaluation of the proposal revealed that the bank's CRA

*[illegible]

performance record was less than satisfactory in ascertaining community credit needs, in identifying local development and redevelopment programs, and in implementing a CRA action plan. The relocation cannot occur until the bank undertakes corrective measures resulting in a satisfactory CRA rating from the OCC.

Cross-county Applications
(as of March 31, 1991)

				Pending			
State	*Received*	*Approved*	*Denied*	*D/O*	*LASD*	*BOS*	*Shepherd*
Alabama	1	1	0	0	0	0	0
Colorado	5	0	0	0	0	1	4
Florida	13	13	0	0	0	0	0
Georgia	1	0	1	0	0	0	0
Iowa	1	0	0	1	0	0	0
Indiana	3	3	0	0	0	0	0
Kansas	6	5	1	0		0	0
Louisiana	22	22	0	0	0	0	0
Mississippi	2	2	0	0	0	0	0
Missouri	2	2	0	0	0	0	0
New Mexico	1	0	0	0	0	0	1
Tennessee	20	20	0	0	0	0	0
Texas	6	6	0	0	0	0	0
Wisconsin	3	3	0	0	0	0	0
TOTAL	86	77	2	1	0	1	5

Note: These figures refer to cross-county branch applications filed with the OCC as a result of OCC's decision on July 9, 1985, to allow Deposit Guaranty National Bank, Jackson, Mississippi, to branch to the same extent as state-chartered thrifts.

Ballard C. Gilmore
Corporate Activity Division

Speeches and Congressional Testimony

Statement of Robert L. Clarke before the Senate Committee on Banking, Housing, and Urban Affairs on the closure of the Bank of New England, Washington, D.C., January 9, 1991

Mr. Chairman and members of the committee, I am here today at your request to discuss the events leading up to the closure of the Bank of New England, N.A. (Bank) and two affiliated banks: the Connecticut Bank and Trust Company, N.A. (Connecticut) and the Maine National Bank (Maine).* The Bank had, through aggressive lending practices, built up a large concentration of real estate loans, and began to suffer substantial losses when the New England economy entered a severe downturn in 1989. Under close supervision by the Office of the Comptroller of the Currency (OCC), the Bank attempted to remedy its problems. Unfortunately, it was unable to do so, and losses continued throughout 1990. On January 6, the OCC determined that those losses had exhausted the Bank's equity capital. In consultation with the Federal Reserve Board and the Federal Deposit Insurance Corporation (FDIC), the OCC declared the Bank insolvent and appointed the FDIC as receiver. The failure of the Bank triggered the failure of its two affiliated banks, as I will explain later in my statement.

These events come at a time when the banking system and the Bank Insurance Fund are already under considerable stress. This heightens concern as to whether the Bank and its affiliates were adequately supervised. I believe the closure was properly timed and was handled appropriately by the OCC and the FDIC. This will become clear as I review the supervisory history of the Bank for the past two years, up to and including the events of the past week.

The New England Economy

During the first half of the 1980s, much of the New England region experienced an economic boom fueled by growth in high-technology manufacturing industries. One by-product of the boom was a rapid escalation in commercial and residential real estate values. The resulting increase in real estate construction served to augment and prolong the economic expansion.

The boom began to unravel after 1985, as defense cutbacks reduced demand for the region's products. The service, finance, and construction sectors of the regional economy continued to propel economic expansion for several more years, but by early 1989 the region had entered an economic downturn which has now continued for almost two years. For example, in Massachusetts, between the first quarter of 1989 and the third quarter of 1990, total manufacturing employment fell by 5.9 percent; housing starts fell by 37.8 percent, and the average price of a new single-family home fell by 7.8 percent. In some areas, commercial real estate has been substantially overbuilt, resulting in large numbers of distressed properties.

The economic downturn adversely affected virtually all New England banks, but it has been particularly damaging for the Bank of New England, which aggressively pursued real estate financing during the boom. By failing to adhere to sound credit underwriting standards or to maintain a properly diversified balance sheet, the Bank exposed itself to disproportionate and ultimately unsustainable losses when the real estate market collapsed.

OCC Supervision of the Bank of New England

The OCC's awareness of problems at the Bank is not a recent development. At year-end 1987 and 1988, we conducted examinations at the Bank and at each of its affiliated banks. We have kept bank examiners at the Bank continuously since September 1989. OCC presence at the Bank has been substantial, numbering as many as 150 examiners at times. During the examination that began in September 1989, OCC examiners logged more than 4,000 workdays at the Bank and its affiliates. Representatives of the FDIC and the Federal Reserve System also participated in this and subsequent examinations.

The examination of the Bank's condition as of December 31, 1988 was completed in May 1989. In the examination report that was presented to the Bank, we specifically criticized certain practices of the Bank. Subsequently, on August 10, 1989, the Bank and its directors consented to a formal agreement to correct deficiencies in its real estate lending practices. The agreement directed the Bank to remedy deficiencies in loan administration, loan loss reserve adequacy, and policies for identifying problem loans, to develop a written plan for dealing with each asset that had been criticized by the OCC, and to develop a plan for maintaining adequate capital.

As is normal practice in such cases, concern over the continued deterioration in the Bank's condition led to a

*Note: The Comptroller also delivered this testimony later in the day before the House Committee on Banking, Finance and Urban Affairs.

[illegible] from OCC headquarters more directly in[illegible] day-to-day supervision. In addition, an examiner from the OCC's Multinational Banking Department with extensive experience in dealing with distressed real estate portfolios was assigned as examiner-in-charge at the Bank.

On December 7, 1989, based on its continuing review, the OCC directed the Bank and its affiliated banks to recover the fourth quarter dividends that they had paid to their parent, the Bank of New England Corporation (Corporation). The Corporation subsequently took the extraordinary step of rescinding a dividend that had been announced (although not yet paid) to its stockholders. Since that time, neither the banks nor the Corporation have made any dividend payments.

On February 26, 1990, the Bank and its directors consented to a cease and desist order with the OCC which expanded upon the provisions of the earlier formal agreement. In addition, the cease and desist order imposed numerous specific restrictions aimed at preventing the dissipation of bank assets. These included restrictions on severance pay and management contracts for the Bank's senior officers, prior OCC approval of dividend payments and other intercompany transactions, and a prohibition on further commercial real estate lending. The OCC also required the Bank to increase capital to three percent of assets by May 31, 1990, and to submit for OCC approval a plan outlining how the Bank would further increase its capital to comply with all applicable capital adequacy standards. Similar cease and desist orders were executed in April and May, respectively, by Connecticut and Maine and their directors. The OCC also advised the Securities and Exchange Commission that, as a result of this examination, the bank was being required to refile its third quarter call report.

Throughout this period, the Bank took a number of steps on its own to improve its condition, including some that were not required by the formal agreement with the OCC. For example, in December 1989, the Corporation raised $613 million through the sale of a leasing subsidiary and the securitization of automobile loans. The proceeds of these sales were used to improve the Bank's capital position and stabilize its liquidity. This was followed by more than $1 billion in credit card, mortgage and other loan sales in February 1990. Despite these efforts, the condition of the Bank continued to deteriorate. On January 22, 1990, the Bank found it necessary to borrow $225 million at the Federal Reserve's discount window.

[illegible] after the Corporation announced that its [illegible] in 1989, the chief executive officer of the Corporation and the Bank resigned and was replaced by an interim chief executive. On March 5, Lawrence K. Fish was elected permanent chief executive officer of the Corporation and the Bank, with the approval of the OCC. The following month, the Bank announced personnel reductions as part of a cost saving plan.

The new management team continued to implement the Corporation's asset sale and subsidiary divestiture program. These sales, along with shrinkage in the banks, resulted in the banks' assets shrinking from $32 billion in 1989 to approximately $22 billion by the time the banks were closed. In June, the Bank was able to use the proceeds of this program, in conjunction with a national certificate of deposit program, to discontinue borrowing from the Federal Reserve Bank of Boston, on which it had been depending for liquidity since January. For the past several months, the OCC has carefully monitored the progress of the recapitalization plan proposed by the Bank's new management. From July until the Bank was closed, the Corporation tried unsuccessfully to raise new equity capital. Most recently, the Corporation tried unsuccessfully to implement an exchange of its outstanding debt securities for equity. Throughout these efforts, operating losses and the continued deterioration of the Bank's real estate loan portfolio continued to erode the Bank's remaining capital.

Declaring Insolvency

The OCC's most recent examination of the Bank began in November 1990. On Thursday, January 3, in the course of that examination, representatives of the Corporation and its constituent banks met with OCC examiners to report the results of operations for the fourth quarter of 1990 and the overall condition of the Bank. The representatives stated that the Corporation expected to post an operating loss of up to $450 million for the fourth quarter, and that a loss of that magnitude would exhaust the equity capital of both the Bank and the Corporation. The OCC's examination team reviewed the data provided and determined that the Bank's equity capital was indeed exhausted.

On Friday and Saturday, after the Corporation publicly announced its anticipated fourth quarter loss, the Bank and Connecticut experienced substantial deposit outflows which threatened to cause an immediate liquidity crisis.

On Sunday, January 6, the OCC formally declared the Bank insolvent and appointed the FDIC receiver. This event, in turn, triggered the insolvency of the two affiliated banks.

As a result of the Bank's insolvency, Connecticut was unable to recover the full value of $1.481 billion in federal funds that it had loaned to the Bank. When the

loss calculated by the FDIC was charged against the capital accounts of Connecticut, it was left with an equity capital deficiency of $49 million. The OCC therefore declared Connecticut insolvent and placed it in receivership as well.

The closure of Maine was triggered by the cross-guarantee provision contained in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). Section 206(e) of FIRREA provides that an insured depository institution can be held liable for any loss which the FDIC anticipates incurring in connection with the default of a commonly controlled insured depository institution. The FDIC, after consulting with the OCC, demanded immediate payment by Maine of an amount equal to the FDIC's expected loss as receiver for the Bank. When Maine responded that it was unable to make the payment, the OCC declared it insolvent and placed it in receivership. This is the first time that the cross-guarantee provision of FIRREA has been used to close a bank.

The magnitude of the FDIC's expected loss raises an obvious question: if the OCC had closed the Bank or placed it in receivership earlier, would the expected cost to the FDIC have been less? We do not believe so. The new management installed at the Bank in March 1990 was operating the Bank in a sound manner given the condition of its balance sheet, had made substantial progress in resolving the problems identified in the cease and desist order, and was cooperating fully with the OCC. OCC examiners stationed at the Bank were monitoring the situation continuously, and Bank managers were keeping the OCC fully informed of their actions in monthly meetings with senior officials from the OCC and other banking agencies.

Furthermore, the FDIC's experience in liquidating banks has demonstrated that there is typically an immediate depreciation in asset values when an institution is placed in government receivership. Consequently, we believe that the loss to the FDIC did not increase, and may well have been reduced, due to the efforts of the new management team. These efforts included the sale of Corporation assets and the downstreaming of the sale proceeds to the Bank. Had the Bank been closed earlier, these assets would have been left behind in the Corporation and would not have been available to reduce the FDIC's eventual resolution cost. In addition, a number of the Bank's foreign exchange and interest rate positions were closed out while the Bank remained open, further reducing the potential loss to the FDIC.

Finally, closing the Bank could have imposed substantial costs on bank customers who, given the shaky condition of the local economy, could have encountered difficulties in establishing new relationships with other depository institutions. While the choice of closure methods could have mitigated these effects somewhat, a bank left in private hands is generally better able to meet the needs of the community than a bridge bank or a bank placed in receivership.

Bridge Banks

After the OCC closed the three banks and appointed the FDIC receiver, three bridge banks were established to assume the assets and liabilities of the three insolvent banks. Bridge banks, which are chartered by the OCC but are totally owned by the FDIC, are authorized by the Competitive Equality Banking Act of 1987 as a method for continuing the operation of an insolvent bank while a more permanent solution is worked out. The bridge banks were capitalized by the FDIC and opened for business as usual on January 7. The FDIC has agreed to provide assistance to facilitate their acquisition in the near future by qualified institutions.

All deposits of the Bank, Connecticut, and Maine, including those in excess of the $100,000 insurance limit, were transferred to the bridge banks and are fully protected. Also protected are federal funds sold to the banks by unaffiliated institutions, liabilities to trade creditors and employees, and foreign exchange and interest rate swaps and other qualified financial contracts. Other unsubordinated creditors of the banks will share "pro rata" with the FDIC in the proceeds of receivership. The bridge banks did not, however, assume any of the liabilities of the parent holding company. The Corporation's equity in the banks has been wiped out, and Corporation bondholders and creditors will share "pro rata" in receivership proceeds.

The FDIC chose to protect uninsured depositors in each of the three banks, and to protect some other uninsured bank creditors (but not holding company creditors), in order to provide stability to the New England economy at a time when it is already struggling to emerge from a regional downturn and shaken by the failure of the private insurance system insuring 45 depository institutions in Rhode Island. A further loss of confidence in the U.S. banking system could have induced additional bank failures which would have cost the FDIC more than it would have saved by limiting coverage to insured deposits.

Conclusions

Although current attention naturally focuses on the supervisory events of the last few days, I want to stress that the OCC supervised the Bank intensively long before its insolvency. Under the OCC's supervision, the Bank installed new management, embarked on a program of asset sales and cost reductions to stabilize the

Bank suspended dividends, and pursued a variety of measures to recapitalize the Bank, all of which contributed to reducing the estimated loss to the FDIC. These efforts to salvage the Bank ultimately failed in large part due to the length and severity of the economic downturn in New England, which caused continued deterioration in the Bank's portfolio and made it impossible for the Bank to reverse the series of operating losses that ultimately led to its insolvency. When these efforts failed and the Bank exhausted its equity capital, we closed it.

Remarks by Robert L. Clarke before the New York State Bankers Association, on recent OCC policy initiatives affecting national banks, New York, New York, January 31, 1991

Several years ago, two of my friends back in Texas who had always wanted to go ice fishing finally got their chance. During one January, they packed their gear and flew to one of the most promising lakes in Minnesota. Upon their return, I picked them up at the airport, eager to hear about their adventures, and perhaps to be offered a fresh Northern pike. It had not gone well.

Said one of my friends: "You couldn't drag me back up there. Ice fishing is for people with frostbitten brains."

"Why?" I asked.

He replied: "It took me and Joe more than three hours to chop a hole in the ice big enough for the boat."

An approach that works in one climate — one context — one set of circumstances — may be inappropriate for another. That's just as true for financial services as it is for fishing.

Consider one challenge that the banking industry now faces: a mark-to-market accounting standard for a bank's entire investment portfolio, and perhaps other assets. The argument in favor of a mark-to-market standard is simple: Securities firms are financial institutions. They are required to mark their portfolios to market. Banks are financial institutions. So they should be required to mark to market, too.

This simple argument, however, ignores the fact that, even in the age of securitization, loans generally are not made to be sold.

The argument in favor of mark-to-market assumes that it would provide the best possible information to users of financial data — investors, depositors, the market place, even regulators. But, along with this potential outcome, several others should be examined — outcomes that go beyond the issue of bank reporting — outcomes that take into account the climate — the context — the set of circumstances that defines banking.

In the long term, mark-to-market may lead bankers to shorten the maturities of their investment portfolios to lessen the standard's impact on earnings and capital. Much of the banking system's investment portfolio consists of U.S. Government securities. Mark-to-market, therefore, has the potential of lessening the appetite of banks for these securities.

Further, banks may change the mix of their asset base to avoid securities and other loans that have to be marked to market. This change could affect bank earnings, liquidity, and asset quality.

Finally, banks would likely completely restructure their asset/liability management strategies if a mark-to-market standard were imposed.

Literally every facet of the business of banking would be affected, as banks increase some of their lines of business and decrease others to meet — not market demands for credit — but the strictures imposed from the standard.

A mark-to-market standard, then, would not merely be a technical change in how the business of banking is reported. Rather, by creating incentives and disincentives, it would drive business decisions by bankers.

Mark-to-market does not represent merely a change in bank accounting.

It represents a change in banking policy.

And it should be recognized as a change in banking policy.

At the very least, the significant incentives and disincentives it would create should be closely examined before a decision is made. As the supervisor of national banks, I assure you that they will be closely examined. The potential for market distortions and for behavior that is not in the long-run best interest of the banking industry and the economy will be measured and factored into any decision.

At present, policy development at the OCC is reflecting changes in the climate of the banking industry in several significant ways.

On Tuesday, we issued a banking bulletin suggesting that national banks make new, voluntary — and I stress, voluntary — disclosures concerning the details of nonaccrual loans. Additional disclosure might include cash interest payments received on such loans, charge-offs taken, and an indication of those loans that are substantially performing even though they are contractually past due. With these disclosures, bank analysts will better be able to see more clearly which assets were earning some return. They will also be able to understand more clearly the reasons why a bank's nonac-

...ual assets are in that status. And all of that is important because the figures on nonaccrual loans are the only public information the analysts have to judge these assets. At present, these nonaccrual assets are lumped together in one number, and many analysts take the conservative approach that they are all losses — or will be losses — and earning nothing.

In the area of real estate loans — an area that interests many of you — the OCC recognizes that, in some cases, the value of a property, though at present depressed, is expected to recover within a reasonable period of time and may be considered to be only temporarily impaired.

Several years ago, the OCC provided guidance indicating when such treatment is appropriate. The guidelines do not necessarily require charge offs of the shortfall between the value of collateral and the loan amount. We are considering enhancing our guidelines on temporary impairment to encourage bankers to make greater use of them. In doing so, we will provide examples of the types of statistical support — such as absorption rates — that substantiate the argument that the value of a property is only temporarily impaired.

Further, we are analyzing various proposals that would establish criteria for returning some nonperforming loans to accrual status.

We are spelling out our policy on the allowance for loan and lease losses in more detail.

And we have recently issued new regulations on payment of dividends. As you know, under our policy, banks may not add back into income the allowance for loan and lease losses in calculating whether to pay dividends. Banks may not pay dividends in excess of net profits — that is to say, current earnings plus two prior years retained net profits. Banks may not pay dividends in excess of undivided profits then on hand. And, under our policy, the OCC may restrict the payment of dividends for reasons of supervisory concern, such as potential dilution of capital. We are now looking at ways to make our approval process for exceptions to our dividend policy consistent.

One thread ties all of these changes together: We recognize that the national banking system is neither uniform nor static. And we recognize that we are in a difficult banking environment.

We are responding to banking's diversity and to the changes that are constantly altering it. And we don't want the environment bankers face to be more difficult than it has to be.

We want bankers to have an accurate understanding of what our standards are. We want those standards to be clear. We want those standards to be realistic. And we want to make sure that those standards are accomplishing the objectives they were designed to accomplish.

No less.

And no more.

We constantly review our standards to make sure that our aims are being met — and we encourage suggestions about how our standards can be improved.

We are playing — and will continue to play — right down the middle.

And that's no fishing story.

Statement of Robert L. Clarke before the Subcommittee on Financial Institutions Supervision, Regulation, and Insurance, House Committee on Banking, Finance and Urban Affairs, on modernization of the structure and regulation of the U.S. financial services industry, February 28, 1991

Introduction

Mr. Chairman and members of the subcommittee, I welcome this opportunity to discuss the need to modernize the structure and regulation of financial services in the United States. The recently released Treasury Department study, "Modernizing the Financial System," is a bold initiative which contains important and comprehensive recommendations for such modernization. I strongly support these recommendations because they deal directly with the critical issues driving the need for reform as well as the principles that should underlie the future structure of the U.S. banking system. In this regard, I believe that policymakers and the public share the same goal — making sure that the U.S. banking system remains safe, stable, and competitive in the years to come.

Recent reports on the condition of the deposit insurance fund have focused the attention of the public, financial institutions, and their regulators on the need to reform the depositor protection system. It is important to recognize, however, that the deposit insurance program is only one facet of the structure of U.S. banking, and it would be shortsighted to attempt to fix the deposit insurance program without examining the structural problems plaguing our banking system.

H.R. 192 sets forth a structure that addresses several reform issues debated in recent years. H.R. 192 provides for the creation of depository institution holding companies (DIHCs), which would be permitted to carry out expanded activities through nonbank affiliates. This provision would permit depository institution holding companies to diversify their product base significantly, while protecting insured deposits by limiting the permissible activities of institutions that are protected by the federal safety net. H.R. 192 would further protect the bank insurance fund by requiring DIHCs to maintain adequate capitalization of their federally insured institutions.

These provisions lead to a structure that is generally consistent with that outlined in the Treasury Department's study. Both proposals seek to strengthen the banking system by removing barriers to competition, and adjusting regulatory and supervisory responsibilities to fit the new structure. They also provide a framework that promotes fair competition by limiting the availability of the federal safety net to banks and their affiliates as they pursue new business opportunities.

My testimony today will discuss some of the restrictions imposed by federal law on competitive opportunities for banking companies, the benefits to be gained from a more integrated banking system, and supervisory and risk management techniques that could be used in a more competitive banking environment.

Restrictions on Banking Activities

If the U.S. banking system is to remain competitive in international markets and provide effective support to U.S. industry, it is essential that banks not be encumbered with costly restrictions on their activities that are not needed to ensure the safety and soundness of the banking system or to protect bank customers. I am particularly concerned that laws that unnecessarily restrict banking activities have reduced bank profitability and diverted capital from the banking industry. This decline in profits has been masked to some extent by portfolio shifts in the direction of higher-return lending, which, of course, carries more risk. Consequently, the efficiency of capital markets is impaired, raising the cost of capital for U.S. banks and putting them at a significant disadvantage in rapidly developing international markets. By reducing the global competitiveness of U.S. financial institutions, vital support for the development of U.S. industry around the world could be reduced; and, domestically, less competition could reduce the variety of services available to consumers and increase their cost.

The OCC supports initiatives to increase capital market efficiency by authorizing U.S. banking firms to offer a broader range of financial services and by removing barriers to interstate banking. Some have argued that expanded competitive opportunities would threaten the safety of the banking system and the solvency of the federal deposit insurance fund. This assumes that such activities would be funded with federally insured deposits or have access to the Federal Reserve System's discount window, and that they would be mismanaged or be inherently riskier than activities which have traditionally been conducted by banks. In my opinion, a less restrictive and more competitive system can be structured in a way that requires equity and debt holders, rather than depositors or taxpayers, to bear whatever risks are associated with the new

[illegible] the risk of mismanagement — a risk [illegible] in any business enterprise.

[illegible] company that continues to be protected by the federal safety net (deposit insurance or the Federal Reserve discount window), it is important that bank supervisors have the tools to deal with [illegible] inappropriate risks with insured deposits. Currently, we do this principally by making sure that banks have enough of their shareholders' own equity capital at risk, by providing effective, ongoing supervision, and by closing institutions when they become insolvent. The Treasury report contains a number of recommendations to enhance the tools supervisors have and in this way improve their ability to limit the exposure of the safety net.

Restrictions on Products

Many of the laws that shape our current financial system date back more than fifty years to a period in which the market for financial services was highly segmented. Financial institutions — commercial banks, investment banks, thrift institutions, and insurance companies — were highly differentiated in terms of the services that they offered to the public and the types of investments that they made. Indeed, some of the restrictions and prohibitions on national bank activities originated in the National Bank Act, which became law in 1864.

Over the years, the lines separating different segments of the market have become increasingly blurred:

- Commercial banks face increased competition for household savings from a host of other providers, such as savings and loan associations, credit unions, and money market mutual funds.

- Savings and loan associations compete with commercial banks, mortgage brokers, insurance companies, and other financial institutions for mortgage originations. The entry of nontraditional lenders into housing finance has been facilitated by the development of a smoothly functioning secondary market for residential mortgages, and by the creation of mortgage-backed securities, which enhance the liquidity of the secondary market.

- The nature of commercial lending has changed. Many [illegible] institutional lenders [illegible] commercial banks, have [illegible] and securities [illegible] increasingly active in providing [illegible] the equivalent of short-term commercial bank financing.

- The growth of the commercial paper market has enabled investment banks to provide credit to the corporate sector, a line of business that has been the traditional domain of commercial banks. Yet commercial banks are substantially restricted from participating in the commercial paper market.

- This explosion of new products, made possible in large part by advances in information-processing technology, has increased competition in the market for financial services, but the competitive opportunities have not been evenly distributed. While investment banks and other financial institutions have been able to make substantial inroads into many traditional banking markets, commercial banks have been impeded from entering new markets by federal laws and regulations that restrict the financial products and services they are authorized to provide.

- The Depression-era Glass-Steagall Act prohibits commercial banks from underwriting, investing in, or trading for their own account in corporate securities; it severely limits the conditions under which banks may be affiliated with firms that engage in these activities. Yet investment banking firms are allowed to own banks and to offer many products and services that compete directly with banks.

- National banking statutes have been interpreted to limit bank insurance underwriting and brokerage activities, yet companies engaged in insurance underwriting can own banks.

- The Bank Holding Company Act effectively prohibits significant ownership of banks by commercial firms, and also generally restricts the insurance activities of bank holding companies conducted through nonbank subsidiaries. Yet commercial firms can own thrift institutions without the same restrictions, and commercial firms can also own banks on a limited basis.

These restrictions are in sharp contrast to the practice in other major industrialized countries, almost all of which permit, for example, a wide range of securities activities either within the bank itself or in a wholly owned subsidiary of the bank. (Only Japan shares our

degree of formal separation between commercial and investment banking — because the modern Japanese banking system was modeled directly after our own — and efforts are underway in Japan to remove these restrictions.) Several European countries also authorize banks to engage in insurance underwriting or to have ties to nonfinancial enterprises to a far greater extent than is allowed in the United States.

Restrictions on Geographic Expansion

Federal law also limits the authority of banks to expand geographically. Under the McFadden Act, national banks (with the approval of the Comptroller) may branch within a state only to the extent permitted to state banks in that state. National banks generally cannot branch across state lines; consequently, interstate banking rules require establishing separate banks in each state, with separate capital structures and management. And the Douglas amendment to the Bank Holding Company Act permits bank holding companies to acquire out-of-state banks only if the acquisition is explicitly authorized by the state in which the target of the acquisition is located.

Ironically, the McFadden Act, enacted in 1927, was originally intended to expand the geographic opportunities of national banks, to allow them to compete with the large branch systems permitted under state charters. Authority to branch within the home-office city was granted by the Congress in 1927, following a Supreme Court decision upholding the prevailing view that national banks did not have the legal authority to branch. Authority for wider area branching (to the extent permissible for state banks) was added by the Banking Act of 1933, partly to facilitate the injection of new capital into the many banks that were failing during the Depression (a situation that parallels recent state legislation and federal policies liberalizing interstate operations by permitting the acquisition of out-of-state insolvent institutions).

In contrast, the Douglas Amendment, like the Bank Holding Company Act to which it was attached, was intended to protect small banks from competition from large — and, generally, out-of-state — financial conglomerates. Senator Douglas represented Illinois, then the largest unit banking state.

Although their original motivation differed, both laws have had the effect of subjecting national banks to the same geographic limits on multi-office networks as state banks. Such restrictions reduce competition in local markets and make banks more vulnerable to local economic downturns.

As competition for the public's savings from other types of financial institutions has intensified, the disadvantages of such limitations on banking networks have become more apparent. Many states have therefore relaxed their restrictions on intrastate branching and interstate banking. Only two states still require unit banking, and the overwhelming majority now permit full statewide branching. Nearly all states now permit acquisitions by out-of-state banking companies. Some of these states have entered into regional compacts, many of which have provisions that will permit entry from any state on a reciprocal basis after a certain date. Other states permit entry from any state with virtually no restrictions.

While many banking firms have succeeded in building interstate banking networks through acquisitions of out-of-state banks, state and federal laws have prevented them from employing potentially more cost-effective direct branch networks. This prohibition is widely believed to have driven up the cost of banking services and to have imposed artificial impediments to consolidation in the financial services industry.

Geographic restrictions in the U.S., like the product restrictions discussed above, are in sharp contrast with banking practices overseas. While we debate the merits of allowing banking firms to purchase out-of-state banks, most European countries have already adopted full nationwide branching, and this will be expanded to unrestricted branching throughout the European Community within two years.

Advantages of Financial Integration

Authorizing commercial banking organizations to provide a broader range of financial services over a wider geographic territory would confer a variety of benefits on the consumers of financial services and the broader public.

Increased Competition in Financial Services

Allowing banking firms to engage in securities or insurance activities (and allowing securities or insurance firms to obtain bank charters) would promote more vigorous and effective competition in each segment of the financial services market. Increased competition would benefit consumers (both depositors and borrowers) in several ways:

- By reducing the cost of financial services to consumers, as firms compete for business by lowering prices.

- By giving consumers a wider variety of financial services and instruments from which to choose.

- By [illegible] firms seeking a share of the [illegible] specialized niches, result-ing in [illegible] individualized service for con-sumers.

Satisfying Customers

A system that enforces a rigid separation between commercial banking and other forms of financial inter-mediation can make it difficult for banking companies to retain customers, particularly in a rapidly evolving market in which many types of financial services are available elsewhere.

For example, many businesses that once relied on tradi-tional bank loans for their financing now find that they can raise money more cheaply by issuing commercial paper. Since Glass-Steagall restrictions limit the authority of banking firms to underwrite corporate securities, banking companies are unable to compete for these customers and are losing them to securities firms.

A more integrated system would provide greater flexibility for banking companies to adapt their product mix to the changing needs of their customers. Moreover, the interests of some customers may be best served by a mix of products that neither banking com-panies nor securities firms are currently authorized to offer together.

Product Diversification

Financial integration would give banking firms addition-al opportunities to diversify their portfolios and income sources. Properly managed diversification into a broader range of financial products and services would enable a banking company to achieve a target rate of return with more stable earnings and less risk of losses to uninsured depositors, investors, and the federal deposit insurer.

Geographic Diversification

Broader branching and interstate banking authority would also increase opportunities for diversification. Geographic diversification, like product diversification, can improve the bank's risk/return trade-off and lower its cost of capital.

These advantages are not merely theoretical. Where interstate banking has been authorized, it has enabled banks to become less dependent on local sources of deposits and less vulnerable to local economic condi-tions. For example, in Arizona, which has allowed inter-state banking since 1986, a large number of national banks are now owned by out-of-state bank holding [illegible] the Arizona banking market deteriorated in the late 1980s, some of these parent firms injected badly needed capital into their Arizona operations. As a result, banks doing business in Arizona have probably suffered less from the downturn in the Arizona real estate market than if those banks did not have access to the resources of more diversified parent banking firms.

International Competitiveness

To the extent that a more fully diversified banking com-pany is able to provide a better risk/return trade-off, the company should be able to raise capital more cheaply. Conversely, if investors perceive that Glass-Steagall Act and other restrictions prevent U.S. banking com-panies from diversifying more fully, and if investors conclude that U.S. banking companies are, as a con-sequence, more risky than they would otherwise be, the result would be to drive up the cost of capital to U.S. banking firms, placing them at a competitive disad-vantage relative to more highly integrated foreign banks. This may provide a partial explanation for the limited success of many U.S. banking companies in overseas markets, and also for their loss of domestic market share to foreign competitors.

The Glass-Steagall Act also has a direct effect on the ability of U.S. banks to compete in overseas markets. Although the European Community may permit U.S. banks to underwrite securities in the post-1992 single European market, the Glass-Steagall Act will prevent U.S. banks from marketing those same securities to their customers in the United States. European banks will be under no such restrictions in distributing securities to their customer base in Europe. The ab-sence of a strong home-country distribution system will place U.S. banks at a disadvantage in competing for a share of the European securities market.

Capital Market Efficiency

Restrictions on banking activities can impede the flow of deposits to the investments that represent their most productive use. Or, the deposits may end up being used for the optimal investments, but the process of financial intermediation may be more costly than is necessary. In either case, the social gains from financial intermediation are less than they would be in a more fully integrated financial system.

The Bank Holding Company Act's prohibitions on the ownership of banks by commercial firms may also reduce capital market efficiency and have the unin-tended effect of cutting banks off from an important source of capital and depriving the banking system of an additional source of stability. When banks have liquidity problems, they currently must resort to

measures such as seeking above-market rate deposits or borrowing from the discount window.

Parent commercial firms could be a source of liquidity for a bank, as they have been recently for securities firms that are owned by financial conglomerates, but few commercial firms would be willing to subject their entire enterprise to extensive regulatory oversight and to the limits that the Bank Holding Company Act places on business activities just so they could buy a bank. Thus, Sears is able to own a thrift because only the thrift, and not the parent company, is subject to regulation by the Office of Thrift Supervision. Sears would undoubtedly have balked at buying a bank, since Sears would then have been required to divest itself of its retailing business in order to comply with the limitations on permissible activities contained in the Bank Holding Company Act. Yet, in its ownership of Sears Savings Bank, Sears has been a source of capital and stable management.

Some opponents of banking reform inevitably argue that expanded business opportunities will lead to a banking crisis similar to the thrift crisis of the 1980s, which, they claim, was caused by deregulation of the thrift industry in the early 1980s. The analogy is incorrect, for several reasons.

First, a principal underlying cause of the thrift crisis was the gross mismatch in the maturities of thrift assets and liabilities, brought on by government policies that encouraged — indeed, required — thrifts to specialize in long-term mortgage loans funded with short-term deposits. When interest rates soared in the early 1980s, this mismatch resulted in massive losses that effectively wiped out the industry's capital. Banks have always had much better diversified balance sheets and are therefore far less exposed to interest rate risk, and they have significant capital positions — $214 billion in equity as of the third quarter of 1990.

Second, the insolvency of the Federal Savings and Loan Insurance Fund prevented the Federal Home Loan Bank Board (FHLBB) from closing insolvent thrifts promptly. Instead, the FHLBB granted capital forbearance, which allowed insolvent thrifts to run up larger losses. In contrast, bank supervisory agencies have increased their supervisory oversight, and close banks promptly when their capital is exhausted. (The Treasury report recommends that banks having virtually no prospects for recovery be placed promptly into conservatorship for subsequent sale or liquidation.) Moreover, the Bank Insurance Fund administered by the FDIC is solvent, though it is under serious strain. Action will be taken to make sure the fund will continue to have sufficient money to take whatever measures are needed to resolve problem banks.

And third, thrifts were authorized to make investments in real estate and junk bonds with insured deposits. A combination of improper asset management and inadequate supervision resulted in excessive risk taking and, eventually, massive losses. Many thrifts that undertook those activities had little capital. In contrast, increased business opportunities for banking companies would be conducted in separately capitalized affiliates with strict limits on funding with insured deposits.

Risks Posed by Expanded Activities

While financial integration has the potential to improve the operating efficiency of banks, and of capital markets generally, it is appropriate to identify the associated risks and to provide a structure of supervision and regulation that deals appropriately with any such risks.

Such a structure should prevent the safety net provided by federal deposit insurance from being extended to non-banking activities, both because such an extension could eventually impose large costs on taxpayers, and because there is no valid public policy reason to extend the safety net beyond core banking functions. It should also control the opportunities for conflicts of interest that can arise when a highly integrated financial services firm becomes involved in more than one aspect of the same transaction. Finally, it should ensure that competition in banking and other markets is not compromised by excessive concentration of economic power in a few large financial services conglomerates.

The Magnitude of Risk

Some have argued that expanded competitive opportunities for banks would introduce more risk into the banking system than exists under the present structure. Careful analysis suggests that this is not necessarily the case.

The primary new activities that are being considered — such as securities dealing and underwriting and insurance brokerage and underwriting — involve some risks, as do most business ventures, but they are not intrinsically high-risk enterprises. Well-managed firms in each of these areas have remained in business for many years, successfully managing their business risks and delivering profits to their investors. There is no reason why these activities should suddenly become riskier because they are conducted under the auspices of a banking firm. As long as the safety net is not extended to those activities, there is no reason why they should threaten the safety and soundness of the banking system.

securities underwriting, to take one example, is not necessarily as risky as many businesses in which banks now engage, such as commercial lending. Securities underwriters typically serve as middlemen [illegible] not usually committed to an underwriting [illegible] unless an underwriting syndicate exists to purchase the securities and the underwriter is exposed only in the event that the syndicate fails to perform. An underwriter typically is exposed for only a short period of time, if at all. In contrast, a commercial lender typically commits to provide funds for a longer term, thus bearing credit risk over a longer period of time, during which the fortunes of the borrower may change. Commercial lending can, therefore, involve greater risk to a bank than would the same extension of credit structured as an underwriting transaction.

Protecting Safety and Soundness

If, on the other hand, banks were permitted to fund certain expanded activities with insured deposits, thereby extending the safety net to these activities, substantial amounts of risk could be shifted to the federal deposit insurer, and, potentially, to taxpayers. Not all expanded activities, however, raise this possibility. Brokerage of insurance, for example, as well as some other currently prohibited activities such as management of mutual funds composed of equity securities, involve the bank as an agent rather than as an owner, underwriter, or guarantor of assets. Since the customer, rather than the bank, bears the risk of any change in the assets' value, these activities pose relatively little risk to the bank. They can therefore be conducted in commercial banks without posing any threat to safety and soundness.

Other expanded activities — insurance underwriting, for example, could pose more significant risks. But insured depositories can be insulated from such risks by requiring that certain types of newly permitted business activities be conducted in separately incorporated affiliates funded with uninsured liabilities and externally generated capital.

Insulating banks from risk is not the only reason to require banking companies to conduct certain activities in separate nonbank affiliates. Separation would also ensure that any residual subsidies implicit in the pricing of federal safety net services will not give banking firms an unfair competitive advantage.

Furthermore, separation would avoid extending the safety net to activities for which it was not intended. The [illegible] closely linked to the special [illegible] functions (deposit-taking, [illegible] payments system, and maintaining [illegible] the money supply) play in the economy. There may be reasons — quite apart from the risk, cost, or effect on competition — to avoid extending the safety net to other activities that do not share these special characteristics.

Finally, separation would provide clear lines of demarcation between the areas of responsibility of federal financial regulatory agencies, such as the division of responsibilities between banking agencies and the Securities and Exchange Commission. This would facilitate functional regulation of financial markets, where appropriate.

Corporate Separateness and Firewalls

In a series of decisions issued since 1987 interpreting Section 20 of the Glass-Steagall Act, the Board of Governors of the Federal Reserve System has approved applications from bank holding companies to establish nonbank subsidiaries that underwrite and deal to a limited extent in certain bank-ineligible securities. To comply with the restriction of Section 20 that prevents banks from being affiliated with firms that are "engaged principally" in underwriting, the Board prohibits such affiliations if the revenues generated by "bank-ineligible" activities exceed a set percentage of the revenues of the Section 20 affiliate. The Board broadened the range of permissible activities in 1989 to include all corporate debt securities, and authority to underwrite equity as well.

In its Section 20 orders, the Board imposed a number of firewalls intended to insulate banks from risk. These firewalls generally prohibit banks from extending credit to, selling assets to, purchasing assets from, or financing the purchase by third parties of securities underwritten by their Section 20 affiliates during the underwriting period and for a period of time thereafter; and the Board requires that any investment by a bank holding company in its Section 20 affiliate must be deducted from the holding company's regulatory capital.

These firewalls can be criticized for subjecting affiliated firms engaging in expanded activities to a more stringent standard than is applied to extensions of credit to unrelated firms, which may involve comparable risk. Bank regulators recognize that individual risky loans are not necessarily unsuitable for bank investment, provided the bank can achieve a sufficient degree of diversification. Consequently, rather than prohibiting all risky loans, regulators have traditionally set limits on the fraction of a bank's portfolio that may consist of loans to any one borrower.

The same approach could be applied to expanded activities. Instead of prohibiting a bank from lending to or investing in its expanded activities affiliates, the

aggregate exposure of a bank to its affiliate — including "arms-length" extensions of credit to the affiliate and its customers and purchases of assets other than short-term government securities — could be subject to limitations analogous to the current limits on loans to one borrower. The Treasury study describes other important funding firewalls designed to prevent inappropriate extensions of the federal safety net. For example, it recommends that unusually large transfers of funds between a bank and its affiliate would require prior notice to the bank regulator.

The most appropriate approach to bank supervision under a revised system of bank activities would vary depending on the exact nature of the revised system. Generally, a banking structure based on exposure limits would not place any extraordinary demands on the supervisory functions of bank regulatory agencies. Limits on the aggregate credit exposures of banks to their expanded activities affiliates would have to be monitored and enforced, but this would not present unusual problems to supervisors already accustomed to enforcing limits on loans to one borrower or to related borrowers.

Using exposure limits to control interaffiliate transactions would provide the maximum benefits from financial integration consistent with safety and soundness of the banking system. Limits on exposure, properly set, would ensure that losses of the affiliate would not endanger the safety and soundness of the bank. However, we should not adopt firewalls that would restrict the operational, managerial, or marketing efficiencies that could be gained by expanding the activities of banking companies.

Bank Supervision

In order for the U.S. banking system to be safe, sound, and competitive, we must have well-diversified and profitable institutions and effective supervision to protect the system against excessive risk. We use three basic tools for controlling risk: capital standards, supervision and examination, and bank conservatorship and closure. In recent years, the OCC has made important improvements in all three areas.

Capital Standards

At the end of 1990, the OCC, along with the Federal Reserve Board and the FDIC, began to implement risk-based capital standards. These standards make banks more sensitive to the credit risks in their portfolios and to their off-balance sheet risks. The standards also force banks to give greater emphasis to equity capital. As a result, many of the largest banks are either being required to raise more capital or reduce their balance sheet risk.

As we phase in these requirements, we are working to improve them further. For example, the eight percent minimum risk-based capital standard represents a minimum standard; where appropriate, the OCC will require banks to have more capital than the minimum — as many banks already do today. Representatives from the OCC and the Federal Reserve System are now participating in working groups set up by the Bank for International Settlements in Basle, Switzerland to determine if interest rate risk and foreign exchange rate risk can be reflected in the risk-based capital guidelines. The Treasury report emphasizes the importance of addressing interest rate risk and recommends that U.S. supervisors develop a reporting system within one year, which would form the basis for incorporating interest rate risk explicitly in capital requirements. Another important recommendation of the Treasury report is that incentives be created for banks to hold capital above the regulatory minimums.

Once supervisors have evaluated additional risks — and considered other enhancements to risk-based capital requirements — we will have a more accurate assessment of what the precise level of bank capital ultimately should be. But one thing is clear: we need to ensure that significant losses from bank failures are borne by equity and uninsured debt holders, not the FDIC.

Supervision and Examination

Strong capital standards must be complemented by a strong supervisory system. One of the lessons of the savings and loan crisis is that the assets of depository institutions must be valued realistically. Effective bank supervision serves as a check to ensure that asset valuations are in fact realistic.

Large national banks account for roughly half of total national bank assets and one third of all assets in the banking system. They are complex institutions that play a crucial role in the nation's financial system. Because of their size and complexity, we maintain full-time resident examination teams in each multinational bank to devise and carry out supervisory strategies.

The supervisory strategies for other banks are determined case-by-case, with the greatest resources focused on those banks where we see indications of potential problems. Our approach is not unlike that of the Internal Revenue Service, which directs more of its auditing resources at filers who fall into higher risk categories.

In its report on deposit insurance, the Treasury Department proposed a series of measures designed to ensure that bank supervisors take prompt corrective

[illegible] bank difficulties. I support measures to give supervisors the authority to impress upon bank managers and directors their responsibility for operating their banks in a prudent manner. I also believe that supervisors must have the authority to act decisively when bankers fail to meet that responsibility.

Bank Conservatorship and Closure

The third and most potent supervisory tool at our disposal is the ability to close an institution when its capital is depleted. The Treasury report contains recommendations that would go further and would enable supervisors to close banks when capital declines to a critically low level.

In late 1989, the OCC changed its closure regulation to make it possible to close banks earlier. We no longer include loan loss reserves in measuring a bank's capital solvency. This allows us to close an insolvent bank at the point when its equity capital is exhausted, and will significantly reduce the cost to the FDIC of resolving bank failures.

On occasion, circumstances may require that the OCC take over a bank before its capital is completely exhausted. In those cases, the OCC has the authority to place national banks into conservatorship. Conservatorship allows the bank to continue its day-to-day operations under the direction of an OCC-appointed conservator, taking deposits and making loans, while at the same time providing the conservator with an opportunity to assess the actual condition of the bank before deciding whether to return the bank to its shareholders or close it.

Congress amended the OCC's conservatorship authority in the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), and since its passage the OCC has used conservatorship to deal with a liquidity crisis in one bank, a capital and management crisis in another, and a complex change in control situation in a third. The conservatorship tool enhances the supervisor's ability to contain excessive risk in insured depository institutions and to evaluate appropriate means for resolving problem institutions.

I believe that these three supervisory tools, and adequate flexibility in their implementation, will continue to serve us well in maintaining the safety and soundness of the U.S. banking system. I will now turn to some specific issues regarding H.R. 192.

Comments on H.R. 192

In general, I support most of the concepts underlying H.R. 192. [illegible], as defined in the bill, to control federally insured depository institutions as well as any non-banking companies is an important step in the right direction.

Broader ownership of banks would provide more sources of needed capital for the banking industry. The removal of current restrictions on holding companies engaged in the business of banking would significantly increase the potential for these firms to diversify their products. Existing bank holding companies would benefit from the opportunity to strengthen themselves by expanding into other areas of business.

The corporate separateness provided in H.R. 192 is designed to protect insured deposits from the risks associated with a DIHC's other operations. Housing new activities in separately capitalized affiliates preserves the safety and soundness of the banking system without extending the federal safety net. In my opinion, this simple and direct approach is a practical choice. I agree with the system of regulation proposed in H.R. 192. Functional regulation is consistent with the Treasury report recommendations and is the logical complement to a structure that requires nonbank subsidiaries to be separately capitalized. Of course, the separate functional regulators must have access to information about the affiliates to ensure that firewalls are not being breached. Also, as the Treasury study recommends, the primary bank supervisor should have the power to prevent the bank from being unduly exposed to risks from the affiliate. But alternatives that duplicate supervisory responsibilities waste resources and make the process more complex than is necessary. A transition to functional regulation has the added appeal of being relatively easy, since the basic resources and operating mechanisms are already in place.

Finally, I support the concept of giving regulators the authority to require prompt corrective action when an insured institution's capital falls below an adequate level—an important component of the Treasury recommendations. It gives regulators the proper tools they need to protect insured deposits by maintaining adequate capitalization of insured institutions. It also underscores the role of supervision, which has been and will continue to be a key element in maintaining the stability of the U.S. banking system.

Conclusion

The U.S. banking system stands out among major industrialized countries in the degree of separation that it requires between commercial banking and other forms of financial intermediation. Our extensive restrictions on banking activities and on geographic expansion reduce competition in financial markets, make it

difficult for banks to adjust to a changing marketplace, reduce their opportunities for diversification, and perpetuate a less efficient system of capital distribution. As a result, U.S. banks are less efficient, face a higher cost of capital, and are weaker competitors than their more highly integrated foreign counterparts. Removing unnecessary restrictions will allow banks to earn normal profits and neutralize the bias towards higher-risk activities.

Restrictions imposed by current banking law and regulations also harm consumers, who have fewer choices in shopping for financial services, and pay more for them; harm businesses that depend on banks for credit, and find their sources of credit shrinking; and harm the economy as a whole, which suffers when the efficiency of capital markets declines

These restrictions can be relaxed without threatening the safety and soundness of the banking system. Housing expanded activities in separate incorporated affiliates and limiting transactions between them and their banking affiliates will allow banking companies to enjoy the benefits of financial integration without exposing insured deposits to new risk.

If we fail to address these critical issues, the United States may find in a few years that it has lost its position as a leader in the global financial system. I urge the Congress to adopt this year comprehensive legislation that embraces the recommendations of the Treasury report.

Remarks by Susan F. Krause, Senior Deputy Comptroller for Bank Supervision Policy before Women in Housing and Finance, on accounting disclosures, Washington, D.C., February 21, 1991

Language, the tool we use to communicate, is critically important. Language is our means of understanding. But it is also likely to be the greatest source of misunderstanding in our dealings with each other. Why? All too often we take language for granted.

I learned that lesson the hard way when I was planning my first trip to London. I telephoned a hotel there to make reservations and the desk clerk asked: "Do you want a room with shower or a bath?"

"What's the difference?" I asked, expecting that a bath would cost more.

"Well," the clerk patiently responded, "with a bath, you sit down."

Suddenly, the old saying that English is the language that separates the British from the Americans took on a whole new meaning for me.

Yes, language is our means of understanding each other. And it is even more. It provides the means by which we experience and understand reality itself. It forms our conceptual universe. People don't think and then translate their thoughts into a language. People think in a language, in the terms and related concepts that language gives us. Therefore, any language imposes certain ways of thinking. This idea, that language shapes thought, the Sapir-Whorf Hypothesis, is central to the science of modern linguistics.

In college, every economics professor I had at some point made the observation that "accounting is the language of business." The professors were merely pointing out that accounting provided the vocabulary people in business use to communicate with each other — in other words, the words that business people use to exchange ideas and concepts.

In fact, some of these words, and the underlying ideas and concepts, have jumped the boundaries of accounting and finance to enrich our language as a whole. Consider some of the many accounting and financial terms that have entered common speech and have even become cliches: "This is the <u>bottom line</u>" has clearly replaced the old chestnut: "The moral of the story is . . . ."

Consider also: We must <u>account</u> for our actions. And that it is difficult to separate the genuine from the <u>bogus</u>. If we are successful, our <u>stock rises</u>. If we fail, we run the risk of a <u>bankrupt</u> reputation. To <u>coin</u> a phrase: Our ideas gain <u>currency</u>. And you can <u>bank</u> on that.

It has long been recognized that the English language grows through this process. Technical terms are applied to common experience. In fact, our English language has been described as a museum of lost metaphors: Even the word "cliche" was once a technical term. In the early days of printing, a cliche was an illustration on a metal plate that the printer used again and again on different jobs.

Given your professional interest, you may find the enrichment of common English with accounting terminology mildly interesting. But by now I'm sure your asking yourselves: <u>What's the bottom line?</u>

Simply this. Accounting is a language like English. Accounting's concepts are its semantics. Accounting's terminology is its vocabulary. And accounting's rules are its grammar.

Accounting is, as my professors repeatedly noted, a way of exchanging ideas and concepts.

But, more important, accounting is a way of thinking.

And, as a way of thinking, it structures, defines, and even limits the ideas and concepts that we have. It shapes our way of seeing. It is critically important. It cannot be taken for granted. As with all language, we should constantly be aware of its effect on our understanding.

Presumably, the language of accounting exists to accurately portray the financial condition of a business. But — as with any other language — it has the potential to obscure as well as clarify.

And — as with any living language — it grows, it changes, and it adapts.

At the Office of the Comptroller of the Currency, we constantly question whether the accounting concepts, terminology and rules that affect national banks do, indeed, accurately portray the condition of these financial institutions. If we find that they don't, we revise and refine them so that they do. We've done it many times in the past in relative obscurity. And we are currently addressing a number of accounting concepts in the cross hairs of public, press, and political interest.

I want to talk with you today about three of these concepts — three initiatives that will make the accounting language about national banks more precise. These are three initiatives that we would have made regardless of the climate — in good times or in bad — simply because it makes sense to refine accounting language to reflect reality, simply because we have a responsibility to lessen the uncertainty concerning our standards whenever and wherever we can.

The first is a done deal.

We recently issued a banking bulletin that proposed that national banks make new voluntary — and I stress, voluntary — disclosures concerning the details of loans that have been placed on nonaccrual status.

A loan is placed on nonaccrual when interest or principal has been in default for 90 days or more, and the loan is not both well secured and in the process of collection; or payment in full of interest or principal is not expected; or because of deterioration in the financial position of the borrower.

Current public disclosures about these assets have generally been limited to the total amount of nonaccrual assets, interest income, and interest foregone. Such information may not be sufficient to explain the effect of nonaccrual assets on the earnings and financial condition of an institution. As a result, some users of financial statements may have misinterpreted the condition of some institutions and the prospects for the ultimate repayment of these assets.

Additional disclosure might include cash interest payments received on such loans, charge offs taken, and an indication of those loans that are substantially performing even though they are contractually past due. With these disclosures, bank analysts will better be able to see more clearly which assets were earning some return.

And that's important.

At present, these nonaccrual assets are lumped together in one number and many analysts take the conservative approach that they are all earning nothing.

With the same intent — to encourage precision in accounting to lessen uncertainty in thought — we are pursuing a second initiative. We are revisiting an accounting concept in the area of real estate loans, an area that interests many of you.

The OCC has recognized that in some cases, the value of a property, though at present depressed, is expected to recover within a reasonable period of time and may be considered to be only temporarily impaired. Several years ago, the OCC established classification guidelines that address these cases.

The guidelines do not require charge offs of the shortfall between the value of collateral and the loan amount in every situation. We are reiterating those guidelines. And we are considering enhancing our guidelines on temporary impairment to encourage bankers to make greater use of them. In doing so, we will provide examples of the types of statistical support — such as projected absorption rates — that substantiate the argument that the value of a property is only temporarily impaired.

Third, and finally, we are pursuing an initiative that originated last November in a meeting between Comptroller Bob Clarke and bankers in New England. We are analyzing various proposals that address the accrual of income on loans that have been partially charged off — in other words, proposals to recognize income on troubled loans. These proposals are generally termed "loan splitting," but at the OCC we prefer the more precise and substantive terminology "informal restructuring."

These proposals would provide a mechanism for lenders to return any loan to accrual status when collateral values and cash flows are sufficient to support the uncharged off balance and when the borrowers' performance indicates that they are able to service the written down balance of the debt at a rate of interest that the bank was willing to accept for a loan with comparable risk.

All the proposals for returning some portion of nonperforming loans to accrual status carry stringent conditions, all of which must be met.

In effect, an informal restructuring would be the functional equivalent of a formal restructuring. The recognition of reality would be the same in either process.

Why, then, go the informal route? To streamline the process — that is to say, to make it easier, make it faster, and make it fairer.

The choice isn't one of no restructuring, informal restructuring, or formal restructuring. Because informal and formal restructuring would have the same result, the choice is really one of no restructuring or restructuring regardless of method.

Informal restructuring would help banks that have a reputation worse than their condition, and conditions in the marketplace, would warrant.

A few years before the First World War, a visitor to Pablo Picasso's studio found the young artist gazing in despair at a painting in progress — a painting that was to become one of the first abstract masterpieces.

"It's wonderful," the visitor gushed, trying to cheer the young artist up.

"No, the nose is all wrong," Picasso said. "It throws the whole picture out of perspective."

The visitor then asked: "Then why not alter the nose?"

"Alter it," Picasso said, "impossible — I can't even find it."

The abstract may have its place in art, but there is no place for it in accounting. On the contrary, accounting should concern itself with the concrete — and how to express it.

As bank supervisors, we at the OCC want accounting for national banks to paint a clear, representational picture of a bank's situation. We want accounting to present a true-to-life portrait of an institution in numbers and words. We want accounting to be an unaltered, unretouched, documentary photograph.

In short, we want it to reflect reality, not someone's interpretation of reality.

That's the purpose of our nonaccrual rules. And that would be the purpose in informal restructuring. Nothing less. And nothing more.

Accounting should concern itself with describing a business. If it does less — and especially if it does more — it may likely end up driving business decisions — and that should not be the case.

Further, our approach to accounting at the OCC is the same as our approach to regulatory standards in general. We recognize that the national banking system is neither uniform nor static. And we recognize that we are in a difficult banking environment.

We are responding to banking's diversity and to the changes that are constantly altering it. And we don't want the environment bankers face to be more difficult than it has to be. We want our standards to be clear. We want our standards to be realistic. And we want to make sure that our standards are accomplishing the objectives they were designed to accomplish.

We constantly review our standards to make sure that our aims are being met. As Comptroller Bob Clarke has said again and again, in doing so, we are playing — and will continue to play — right down the middle.

Having spent some time discussing with you what three current OCC accounting initiatives are, I would like to note what they are not: They are not panaceas that will address all the ills now besetting the banking industry. They are not magic formulas that will make problems go away. They are not philosophers' stones that will transform dross into gold. They are not — and I dread to use the "F"word — they are not forbearance — although I can see how they might be interpreted as such by biased people who either want the supervisors to forbear — or fear that they will do so.

Expectations aside, the simple fact is that many of the problems of the banking system today are in real estate.

We all know that.

Given the nature of the beast — the subjectivity of the appraisal process, the uniqueness of individual properties, the uncertainty of predicting income and expense streams, and the inherent illiquidity of real estate in general — we want to be reasonable.

And we need to be reasonable.

But reasonable does not mean liberal, irresponsible, or foolish. Reasonable means recognizing reality and reflecting it in our actions. Which is — for the reasons I've discussed today — exactly what we are trying to do. And which is exactly what you would do if you were in our place.

One night in 1952, Adlai E. Stevenson stayed overnight at the White House. His host — President Harry Truman — put Stevenson in the Lincoln Room. Awed at the things in it, Stevenson spent hours wandering around the room, unable to bring himself to lie in the bed. So he spent the night on the sofa. Stevenson assumed that Lincoln slept in the bed. He didn't. It wasn't even there when Lincoln was President. But the sofa was.

As I said, some people have assumed that our accounting initiatives constitute forbearance. That assumption isn't reasonable. The facts simply don't bear it out.

Interpretations — January 1 to March 31, 1991

Interpretive Letters*

536 — December 11, 1990

This is in response to your March 9, 1990, letter to Lisa Lintecom, formerly of the OCC's Investment Securities Division, in which you request a clarification of the scope of Investment Securities Letter No. 36 (March 27, 1989) with respect to its discussion of OCC Interpretive Ruling 7.7010, 12 CFR 7.7010, and its application to bank securities lending programs. The question posed in your letter is whether Investment Securities Letter No. 36 prohibits a national bank from accepting letters of credit as collateral in securities lending activities in which the bank has agreed to indemnify customers against loss.

Under Interpretive Ruling 7.7010, a national bank may:

lend its credit, bind itself as surety to indemnify another, or otherwise become a guarantor, if it has a substantial interest in the performance of the transaction involved <u>or</u> has a segregated deposit sufficient to cover the bank's total potential liability....

12 CFR 7.7010 (emphasis added). Under the interpretive ruling, there are two avenues through which a bank may provide a guarantee to a third party, (1) where the bank has a substantial interest in the transaction or (2) where a segregated deposit has been arranged to cover any liability associated with the guarantee. The OCC has previously ruled that banks have a "substantial interest" in engaging in securities lending activities and that providing customers with indemnification against loss in connection with their participation in such programs is a proper incident to the securities lending function. *See* OCC Interpretive Letter No. 376 (October 25, 1986) *reprinted in* [1985-87 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,546. Pursuant to the "substantial interest" prong of the interpretive ruling, the OCC has required that national banks adhere to the requirements of Banking Circular No. 196 (May 7, 1985) which adopts the Federal Financial Institutions Examination Council ("FFIEC") Supervisory Policy on the lending of investment securities.[1] Under the FFIEC guidelines, irrevocable letters of credit[2] may be used as collateral for securities lending activities. The FFIEC guidelines also address a number of safety and soundness issues with respect to a bank's reliance on letters of credit as collateral. For example, the FFIEC guidelines recommend that each bank establish procedures requiring a credit analysis of the banks issuing the letter of credit before any securities are lent against the collateral. Moreover, the guidelines recommend that these analyses be frequently updated and reevaluated. In addition, the lending bank should establish concentration limits for those banks issuing letters of credit and should adopt procedures to ensure that the limits are not exceeded.

The type of indemnification or indemnity agreement addressed by Investment Securities Letter No. 36, however, involves the second prong of Interpretive Ruling 7.7010, which contemplates an indemnification arrangement in which the bank does not have a "substantial interest" in the transaction. Under this provision of the interpretive ruling, an indemnification agreement will not be viewed as an *ultra vires* guarantee if the bank has a segregated deposit sufficient to cover its total potential liability under the agreement. The term "segregated deposit" has been interpreted by the OCC to mean "money or marketable securities." *See* Letter from John E. Shockey, Chief Counsel, to Victor Ptasnik, dated January 3, 1979 (unpublished); *see also*, *Federal Deposit Insurance Corporation v. Philadelphia Gear Corp.*, 476 U.S. 426 (1986) (letter of credit backed by promissory note does not give rise to an insured deposit under the definition of "deposit" in 12 U.S.C. 1813(1)(1)). The OCC has viewed standby letters of credit[3] as not equivalent to "marketable securities" and, therefore, not qualifying for consideration as a "segregated deposit."[4] This view is supported by the fact that standby letters of credit do not fall within the definition of "securities" set forth in section 8-102 of the Uniform Commercial Code as they are not instruments which are commonly traded on securities exchanges or markets.

Thus, if a national bank is not providing its indemnification on the basis of its "substantial interest" in the transaction, but on the basis of its maintaining a "segregated deposit" sufficient to cover the guarantee, standby letters of credit will not constitute suitable collateral for the purposes of Interpretive Ruling 7.7010. Investment Securities Letter No. 36 states:

if a letter of credit (LOC) issued by another bank is taken as collateral, the OCC has taken the position that this

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*Note: Interpretive Letters and No Objection Letters reflect the views of the Comptroller's legal staff. Trust Interpretations reflect the views of the Trust Activities Division.

[1] Section 220.16 of the Federal Reserve Board's Regulation T, 12 CFR Part 220, which is incorporated by reference in the FFIEC Supervisory Policy, specifically authorizes a creditor to lend securities collateralized by, among other things, "irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation."

[2] A letter of credit may be either revocable or irrevocable. *See* U.C.C. 5-103(1)(a). An irrevocable letter of credit, however, once established, may not be modified or revoked without the consent of the beneficiary. *See* U.C.C. 5-106(2).

[3] In general, and specifically for the purposes of this letter, [illegible] "irrevocable letter of credit" and "standby letter of credit" [illegible] to be used interchangeably.

[4] Similarly, loans collateralized by standby [illegible] qualify for exemption from a national bank's [illegible] U.S.C. 84(c)(C).

[illegible] form of collateral will not meet the requirements of a segregated deposit for purposes of the interpretive ruling because the LOC is not a marketable security.

Investment Securities Letter No. 36 at p. 1. While this statement accurately reflects the OCC's position with respect to the types of collateral which may be included in a "segregated deposit," it was not intended to prohibit a bank's ability to take irrevocable letters of credit as collateral in the context of guarantees made by a national bank in a transaction in which it has a "substantial interest." This conclusion is supported by the preceding sentence in the letter which reads

[t]he completely secured loans [*i.e.*, those 100 percent secured by cash or U.S. government securities] will satisfy interpretive ruling 12 CFR 7.7010 whether or not the bank has a substantial interest in the performance of the transaction.

Id at p. 1 (brackets added). It is my opinion that the purpose of this sentence was not to alter the collateral requirements for indemnification arrangements entered under the "substantial interest" prong of the interpretive ruling, but rather was intended to highlight the fact that if any securities lending transaction was 100 percent collateralized by cash or U.S. government securities there would be little question as to the permissibility of the transaction under either prong of the interpretive ruling.

Consequently, it is my opinion that Investment Securities Letter No. 36 was not intended to modify Banking Circular No. 196 or OCC Interpretive Letter No. 376. Accordingly, under Interpretive Ruling 7.7010, national banks engaged in securities lending activities may continue to collateralize borrowings with irrevocable letters of credit in accordance with the procedures established under Banking Circular No. 196 and may continue to indemnify customers against loss in connection with such securities lending activities since the banks have a "substantial interest" in these transactions.

Peter Liebesman
Assistant Director
Legal Advisory Services Division

* * *

537 — January 8, 1991

This is in response to your November 13, 1990 [illegible] Texas National [illegible] to establish an operating subsidiary to provide asset management services to the Resolution Trust Corporation (RTC). The notice stated that the assets would consist of personal property, real estate, and loans acquired by the RTC as receiver of failed thrift institutions. The bank stated that the operating subsidiary would not acquire assets for its own portfolio, but merely provide services for a fee. These services will include engaging and supervising subcontractors who will manage, maintain, lease, and sell personal property and real estate owned by the RTC and engaging in collection activities with respect to loans owned by the RTC. In addition, the operating subsidiary will formulate asset management and disposition plans for the RTC and provide reports to the RTC regarding the progress of its asset management and disposition efforts. This notice was filed pursuant to 12 CFR 5.34. On November 27, 1990, the 30 day review period established for OCC's review of such notices was extended.

On October 18, 1990, Paul Allan Schott, OCC's Chief Counsel, in a memorandum to Emory W. Rushton, Deputy to the Director, RTC, concluded that, under certain circumstances, national bank operating subsidiaries may legally provide asset management services to the RTC in its capacity as conservator or receiver of savings institutions. Such services may be provided with respect to real estate and other non-loan assets for the purpose of disposing of such assets promptly to recover all or part of the RTC's costs incurred in connection with such assets. That memorandum also concluded that national bank operating subsidiaries may provide loan servicing and related activities to the RTC in its capacity as receiver or conservator of savings institutions.

Relying upon that legal advice, on other information developed in the supervisory process, and on discussions with RTC officials, I conclude that effective December 28, 1990, the bank, through its operating subsidiary, may provide asset management services to the RTC, in its capacity as conservator or receiver of savings institutions, for purposes of disposing of such assets in a timely manner in order to assist the RTC in recovering its costs. This approval extends only to asset management pursuant to the asset management transaction entered into in accordance with RTC Solicitation of Services No. 761-9966-900100-AM.

While managing DPC property on behalf of the RTC as receiver or conservator of savings institutions pursuant to such contract is, as referenced above, legally permissible, such activities must be undertaken in accordance with applicable laws and regulations and safe and sound banking principles. Approval is conditioned on the bank and its subsidiary taking appropriate steps to protect themselves against possible environmental

liability and to avoid possible conflicts of interest or the misuse of confidential information. In addition, the OCC is in the process of preparing supervisory guidelines regarding such activities which are expected to be completed soon. The bank and its subsidiary will be expected to comply with the policies and procedures discussed in these guidelines.

This approval permits the bank, through its operating subsidiary, to engage in asset management activities for the RTC only pursuant to the transaction referenced above. If the bank seeks to provide additional asset management services to the RTC through the same or any other operating subsidiary, it must file additional notices of proposed activities pursuant to 12 CFR 5.34 before entering into further contracts.

J. Michael Shepherd
Senior Deputy Comptroller
for Corporate and Economic Programs

* * *

538 — January 8, 1991

This letter is in further response to the August 24, 1989, notice filed on behalf of NCNB Texas National Bank to permit the bank, through its subsidiaries, Financial Resource Management, Inc. (FRM), and Financial Resource Management Trust Company (FRMTC), to engage in debt collection and the management and liquidation of assets acquired in satisfaction of debts previously contracted by (1) the bank, (2) other financial institutions, and (3) government agencies acting as insurers or receivers of financial institutions. The notice was filed pursuant to 12 CFR 5.34. On September 22, 1989, the 30 day review period established for OCC's review of such notices was extended.

On December 26, 1989, approval was given to those aspects of the bank's proposal under which the subsidiary would perform debt collection and asset management functions with respect to the bank's properties acquired in satisfaction of debts previously contracted ("DPC property"). At that time, the subsidiary was also permitted to perform asset management services undertaken by the bank in an interim servicing agreement entered into with the RTC as a requisite part of a transaction whereby the bank purchased certain assets and assumed the deposit liabilities of the former University Savings Association (the Savings Association). In that approval, final determination was withheld regarding the issue of whether a national bank may perform, either directly or through an operating subsidiary, similar services for other financial institutions and for the RTC or other government agencies in other contexts.

On July 2, 1990, the OCC extended the approval given on December 26, 1989, to permit the operating subsidiary to bid on a more permanent asset management contract with respect to the assets retained by the RTC following the sale of the Savings Association to the bank. Again, determinations regarding other aspects of the bank's August 1989 proposal were deferred.

On October 18, 1990, Paul Allan Schott, OCC's Chief Council, in a memorandum to Emory W. Rushton, Deputy to the Director, RTC, concluded that, under certain circumstances, national bank operating subsidiaries may legally provide asset management services to the RTC in its capacity as conservator or receiver of savings institutions. Such services may be provided with respect to real estate and other non-loan assets for the purpose of disposing of such assets promptly to recover all or part of the RTC's costs incurred in connection with such assets. That memorandum also concluded that national bank operating subsidiaries may provide loan servicing and related activities to the RTC in its capacity as receiver or conservator of savings institutions.

Relying upon that legal advice, other supervisory information, and discussions with RTC officials, I conclude that, effective December 28, 1990, the bank, through FRM and FRMTC, may provide asset management services to the RTC, in its capacity as conservator or receiver of savings institutions, for purposes of disposing of such assets in a timely manner in order to assist the RTC in recovering its costs. This approval extends only to asset management pursuant to two asset management transactions entered into by FRMTC in accordance with RTC Solicitation of Services Nos. 761-9966-900101-AM and 761-9966-900102-AM, and one asset management transaction entered into by FRM in accordance with RTC Solicitation of Services No. 761-9966-900146-AM.

While managing DPC property on behalf of the RTC as receiver or conservator of savings institutions pursuant to such contract is, as referenced above, legally permissible, such activities must be undertaken in accordance with applicable laws and regulations and safe and sound banking principles. Approval is conditioned on the bank and its subsidiary taking appropriate steps to protect themselves against possible environmental liability and to avoid possible conflicts of interest or the misuse of confidential information. In addition, the OCC is in the process of preparing supervisory guidelines regarding such activities which are expected to be completed soon. The bank and its subsidiary will be

expected to comply with the policies and procedures discussed in these guidelines.

This approval permits the bank, through FRM and FRMTC, to engage in asset management activities for the RTC only pursuant to the three transactions referenced above. If the bank seeks to provide additional asset management activities to the RTC through the same or any other operating subsidiaries, it must file additional notices of proposed activities pursuant to 12 CFR 5.34 before entering into further contracts.

J. Michael Shepherd
Senior Deputy Comptroller
for Corporate and Economic Programs

* * *

539 — January 15, 1991

The following summarizes the position of the Law Department with regard to the legality of asset management by national banks for third parties for purposes of timely disposition to recover costs.

I. Asset management activities previously approved for national banks.

A. Asset management for assets held by the RTC as conservator or receiver for purposes of timely disposition to recover all or part of RTC's costs. See my memorandum to you of October 18, 1990; see also letters by Michael J. Shepherd, Senior Deputy Comptroller for Policy and Economic Programs (January 8, 1991) approving such activities for operating subsidiaries of NCNB Texas and Bank One Texas.

II. Our analysis concludes that the following asset management activities are also permissible for national banks.

A. Asset management for assets held by the FDIC as conservator or receiver for purposes of timely disposition to recover all or part of their costs.

B. Asset management for any third party who acquires assets from the RTC or the FDIC as conservator or receiver as long as there is a nexus between the RTC and FDIC and the asset manager which assists the RTC or FDIC to recover all or part of their costs. Instances of such a nexus may include, but are not necessarily limited to, instances where the RTC or FDIC finances or [illegible] the financing of the acquisition and the [illegible] from cash flow generated by the [illegible] where the RTC/FDIC retains a share in the upside potential from the disposition or other use of the asset(s).

C. Asset management for any bank or savings association pursuant to a national bank's authority to provide correspondent banking services.

III. I note that national banks engaging in such activities will be expected to comply with supervisory guidelines that are being prepared by your staff in conjunction with the Office of the Chief National Bank Examiner.

Paul Allan Schott
Chief Counsel

* * *

540 — December 12, 1990

This is in response to your letter on behalf of Household Bank, National Association, Salinas, California (bank), notifying the Deputy Comptroller for the Western District of the bank's intent to establish an operating subsidiary to be named Household Receivables Funding, Inc. (subsidiary). The subsidiary is being formed to facilitate the securitization of credit card receivables held by the bank in the ordinary course of its business.

The Proposal

According to the information provided in your letter and in subsequent telephone conversations with Laura Plaze, Senior Attorney in the Comptroller of the Currency's (OCC) Legal Advisory Services Division, the subsidiary will acquire credit card receivables that the bank has originated or purchased from other credit card issuers in accordance with its usual credit standards. The subsidiary will authorize, issue, and deliver bonds or other evidences of indebtedness or certificated interests (in single or multi-class form), either directly or through trusts, which debt or certificated interests will be supported by the credit card receivables and by such third party credit enhancement as the bank or the subsidiary considers necessary. The subsidiary will engage generally in such other activities as are incidental to accomplishing these activities.

The bank has engaged an independent, unaffiliated investment banking firm to act as underwriter for the initial offering by the subsidiary. The bank, the subsidiary and other bank affiliates do not intend to engage in activities presently or in the future that would cause them to be treated as underwriters for purposes of the federal securities laws.

It is anticipated that the initial transactions to be engaged in by the subsidiary will be structured as

follows. The subsidiary would purchase certain of the bank's credit card receivables that are representative of its entire portfolio of credit card receivables. The receivables are, or will be, serviced by Household Credit Services, Inc. (servicer), an affiliate of the bank which currently services all of the bank's receivables. The subsidiary would sell or transfer the receivables to a trust created pursuant to a Pooling and Servicing Agreement between the subsidiary, the bank, the servicer, and an unaffiliated national bank acting as trustee. The subsidiary would then cause the trust to issue and sell two classes of participation certificates (certificates) to the independent underwriter, which would contemporaneously sell the certificates to investors in a public offering registered with the Securities and Exchange Commission under the Securities Act of 1933. The proceeds from the sale would fund the purchase of the receivables by the trust from the subsidiary and by the subsidiary from the Bank. The remainder of the purchase price for the receivables would be funded by a loan extended to the subsidiary from the bank's parent corporation, Household Finance Corporation.

The holders of the certificates would not have any recourse against the bank, the subsidiary, the servicer, or any other affiliate thereof. Their only recourse would be to exercise their rights with respect to the underlying credit card receivables in the trust, or to enforce any credit enhancement vehicle that the subsidiary or the trust might obtain from an unaffiliated bank to support the certificates. These facts would be brought prominently to the attention of prospective investors, who would also be specifically informed that the certificates do not represent deposits or obligations of the bank and are not insured by the Federal Deposit Insurance Corporation.

In addition, the bank represents that it will not finance any purchaser's acquisition of the certificates, will not purchase any of the certificates for the bank's pension accounts or any trust or agency accounts as to which the bank has investment discretion, will not promote the certificates, and will not lend money to the subsidiary.

Discussion

A national bank may engage in activities which are part of or incidental to the business of banking through means of an operating subsidiary. *See* 12 CFR 5.34(c). The national banking laws grant national banks broad authority to buy and sell loan assets. *See* 12 U.S.C. 24 (Seventh) (granting express power to discount and negotiate evidences of debt, and all such incidental powers as shall be necessary to carry on the business of banking). National banks also have broad authority to borrow money and to pledge their assets as collateral for such borrowings. *See* Interpretive Letter No. 378 (March 24, 1987), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,602 (reviewing relevant case law).

On the basis of these authorizations, the OCC has approved numerous proposals in which national banks have used asset securitization as a means of selling or borrowing against their mortgage assets. *See, e.g.*, Interpretive Letter No. 388 (June 16, 1987), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,612; Interpretive Letter No. 417 (February 17, 1988) *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,641; Interpretive Letter No. 418 (February 17, 1988 *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,642. In *Securities Industry Association v. Clarke*, 885 F.2d 1034 (2nd Cir. 1989), *cert. denied*, 110 S. Ct. 1113 (1990), the United States Court of Appeals for the Second Circuit upheld the OCC's decision in Interpretive Letter No. 388 that a national bank's issuance and sale of pass-through certificates evidencing interests in a pool of its mortgage loans was authorized by the national banking laws. The court held that the OCC had reasonably determined that the use of the certificate form to effect the sale of the bank's mortgage assets fell within the bank's incidental powers under 12 U.S.C. 24 (Seventh).

The OCC has also approved the use of securitization as a means of selling other types of loan assets that a national bank has originated or acquired, specifically leases and motor vehicle installment sales contracts. *See* Interpretive Letter No. 416 (February 16, 1988), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,640. The structure proposed for the bank and the subsidiary's credit card securitization program is very similar to the structure approved by the OCC in this interpretive letter. While the OCC has not previously addressed the legal authority for a national bank to sell or borrow against its credit card receivables through the use of the securitization, it is clear that this activity is permitted for national banks.

Credit card receivables are loan assets evidencing loans made on personal security. *See* 12 U.S.C. 24 (Seventh) and 12 CFR 7.7378. National banks may purchase and sell these loan assets pursuant to their authority to discount and negotiate evidences of debt. Indeed, the United States Supreme Court has long recognized that the negotiation, *i.e.*, the sale of evidences of debt acquired through a national bank's express authority to lend money on the security of real estate is authorized as part of the business of banking under 12 U.S.C. 24 (Seventh). *See First National Bank of Hartford v. City of Hartford*, 273 U.S. 548 (1927). Similarly, as the OCC stated in Interpretive Letter No. 416, the negotia-

[illegible] on personal security is also part of the business of banking. Accordingly, the bank is authorized to sell the credit card receivables through use of the subsidiary. In addition, because national banks are authorized to borrow money and to pledge their assets as collateral therefor, the subsidiary is authorized to borrow funds in the market using the credit card receivables as collateral.

The use of securitization to accomplish the sale of the receivables or as a vehicle for borrowing against them is a permissible means by which a national bank may carry out these activities. As the OCC has previously noted, securitization is simply a means for effecting the selling, purchasing, borrowing, and lending functions of the secondary market. *See* Interpretive Letter No. 418, *supra*. Through use of the various securitization structures, banks are able to sell and borrow against their assets in this market more efficiently. Just as when a bank securitizes its mortgage assets, the use of this form for the transfer of other loan assets can be viewed either as a new way for the bank to engage in established banking practices or as a separate activity that is authorized under the incidental powers clause of 12 U.S.C. 24 (Seventh). *See Securities Industry Association v. Clarke, supra; American Insurance Association v. Clark*, 865 F.2d 278 (D.C. Cir. 1988) (essence rather than form determines whether an activity is part of the business of banking); *M & M Leasing Corporation v. Seattle First National Bank*, 563 F.2d 1377 (9th Cir. 1977), *cert. denied*, 436 U.S. 956 (1978) (powers of national banks must be construed to permit new ways of conducting the very old business of banking).

Because the activities proposed for the subsidiary are authorized as part of the business of banking, there is no need to consider the application of the restrictions contained in the Glass-Steagall Act on the extent to which a national bank may underwrite and deal in securities. *See Securities Industry Association v. Clarke*, 885 F.2d at 1050 (Glass-Steagall Act prohibitions do not apply to activities authorized as part of the "business of banking"). In addition, the fact that neither the bank nor the subsidiary will participate in the public distribution of the receivable-backed securities provides an independent basis for concluding that the proposed activities are not subject to the Glass-Steagall Act's prohibitions on securities underwriting.

One final point concerns the bank and its parent corporation's status under the Bank Holding Company Act of 1956 (BHCA). You indicated during an October [illegible] conversation with Ms. Plaze that the [illegible] bank" that operates within the [illegible] of the BHCA, as [illegible] Competitive Equality Banking Act of [illegible] provides an exception from the definition of "bank" contained in the BHCA for institutions that engage only in credit card operations and meet certain other requirements. The parent corporations of such institutions are generally not subject to the BHCA. As the Board of Governors of the Federal Reserve System is the primary federal regulator of bank holding companies, the bank is advised to consult with the staff of that agency concerning whether the proposed securitization activities would be consistent with the exception for "credit card banks" provided by the BHCA.

In conclusion, because the national banking laws authorize the Bank to engage in the activities described in your notification letter, these activities may be performed in an operating subsidiary. The OCC does not object to the Bank's establishing the subsidiary as proposed.

J. Michael Shepherd
Senior Deputy Comptroller for
Corporate and Economic Programs

* * *

541 — February 6, 1991

This responds to your operating subsidiary notice, dated August 24, 1990, and supplemented in a November 14, 1990 letter, on behalf of Chase Manhattan Bank, N.A. (bank), to expand the activities of a wholly owned subsidiary of the bank, Chase Manhattan Capital Finance Corporation (subsidiary). For the reasons given below, the proposed activities are permissible and the bank may proceed with the proposal.

The Bank's Proposal

Under the bank's original proposal, approved in Interpretive Letter No. 496 (December 18, 1989), the OCC authorized the subsidiary to act as the sole general partner and commodity pool operator of a financial products limited partnership (partnership). The partnership will be a commodity pool, which will trade, invest in, and hold foreign currency spot, forward, futures, and option contracts; U.S. government obligations and futures and options thereon; and gold and silver and forward, futures and options contracts thereon. The original proposal included a "principal protection" feature under which the partnership would guarantee that each limited partner would receive a minimum of a full return of its original investment. The partnership would provide this guarantee either by purchasing zero coupon U.S. Treasury bonds or by obtaining a letter of credit issued by an unaffiliated bank.

The bank proposes the following changes to its original proposals:

(1) Partnership units (units) may be privately placed by the bank's operating subsidiaries or affiliates or by unaffiliated third parties;

(2) the bank, its operating subsidiaries or affiliates, or unaffiliated third parties, and/or their employees, may receive selling fees for privately placing the units;

(3) the units may be redeemable at the option of the investor (the redemption feature);

(4) the partnership may include a new feature, the "assured return" feature, to assure each limited partner of receiving a minimum return on its investment;

(5) the principal protection and assured return features may be provided through investment in (i) any deposits issued by the bank or unaffiliated banks and/or (ii) any instruments permissible for a national bank to invest in for its own account, not including futures, option, or forward contracts thereon.

Private Placement

Under the bank's original proposal, the bank itself would privately place the units. Private placement of the units by the bank's subsidiaries and affiliates and by unaffiliated third parties raises no significant issues. Under section 23B of the Federal Reserve Act, 12 U.S.C. 371c-1, the terms of any arrangement involving the bank's affiliates must be at least as favorable to the bank as those the bank would be able to obtain from unaffiliated companies.

Selling Fees

Since the bank and its subsidiaries and affiliates may privately place the units, these entities may receive a fee for this service. Payment of "fees" to employees for sales of the units is, in substance, a sales commission. Banks may pay their employees a commission for selling products. However, such programs must be undertaken with care. *See* OCC Interpretive Letter No. 499 (February 12, 1990), *reprinted in* [1989-1990] Fed. Banking L. Rep. (CCH) ¶ 83,090; Interpretive Letter No. 86 (April 3, 1979), *reprinted in* [1978-1979 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,161. Provided that the bank and its subsidiaries comply with the conditions stated in these letters, payment of commissions to employees is permissible.

Redemption

Under the redemption feature, the partnership will allow investors to redeem their units. The redemption feature may be limited in either of two ways: (1) redemption may be available only at certain times prior to the partnership's maturity date or (2) redemption may be subject to the discretion of the partnership.

This feature raised no significant Glass-Steagall Act issues since the partnership will still make only one private placement offering of the units. (The subsidiary will not attempt to resell redeemed units.) The subsidiary will, therefore, not be subject to continuous promotional pressures with respect to the units. *See Investment Company Institute v. Camp*, 401 U.S. 617, 636 (1971); *Board of Governors of the Federal Reserve System v. Investment Company Institute*, 450 U.S. 46, 51, 66 (1981).

The redemption feature will not expose the partnership to significant financial risk because an investor that redeems will only receive its pro rata share of the value of the partnership. Payments to the investors may be delayed if the partnership is unable to liquidate assets or if there is a default or delay in payments due the partnership from commodity brokers or other persons.

Assured Return and Principal Protection

Under these two features, the subsidiary will use a certain percentage of the partnership's assets to purchase letters of credit issued by an unaffiliated bank, bank deposits (including deposits with the bank), Type I and Type III investment securities, or other instruments in which a national bank may invest.[1] (Previously, the partnership would provide principal protection only, and only through purchase of letters of credit and zero coupon U.S. Treasury bonds.) The partnership's investment strategy will be designed to assure investors that they will receive a certain minimum return on their investment.[2]

The expanded principal protection feature and the new assured return feature are permissible, provided that the bank, the subsidiary, and the partnership do not themselves guarantee any minimal return to investors. Any such assurances made to investors must be based entirely on the partnership's investment strategy.

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[1] The bank is aware that if the partnership's portfolio of assets contains a security subject to the bank's investment or lending limitations, the bank's pro rata share of the partnership's investment in such security (through the subsidiary's 1 percent [illegible] the partnership), when aggregated with the bank's [illegible] holdings of such security will be subject to the applicable [illegible] or lending limitation. The bank will institute [illegible] system to assure compliance with such [illegible] tions.

[2] This assurance will only apply [illegible] maturity. Investors who redeem [illegible] proportionate share of the partnership [illegible].

Conclusion

None of the proposed modifications to the bank's original proposal appear to increase the riskiness of the subsidiary's activities. Further, as was noted in Interpretive letter No. 496, the bank will insulate itself from, and limit its investment in, the subsidiary and partnership. Therefore, all of the proposed modifications to the bank's original description of the subsidiary's activities are permissible.

Judith A. Walter
Senior Deputy Comptroller
for Administration

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542 — February 6, 1991

This is in response to your letter of December 13, 1990, describing a proposal to have *** (bank) act as guarantor for certain loans to borrowers from its wholly owned foreign bank subsidiary (foreign bank). Based on the representations in your letter and subject to the conditions outlined below, the Office of the Comptroller of the Currency (OCC) will not object to the bank's proposal.

The Proposal

As part of its corporate lending activities, the bank provides Canadian dollar loans to borrowers located in Canada. In most cases, these borrowers are Canadian subsidiaries of the bank's U.S. customers who have requested that Canadian dollar loans be made available to their subsidiaries under an overall credit facility with the bank.

In order to avoid the 15 percent Canadian withholding tax on foreign interest income earned by the bank, the bank structures these credit facilities as loans from the foreign bank to the Canadian borrowers. This arrangement has the added advantage of eliminating the currency risk which would be present were the bank to fund the Canadian dollar loans with U.S. dollars. In addition, because of the foreign bank's favored status under Canadian lien statutes, priority liens for these loans are obtained which would otherwise be unavailable to the bank. The bank has been advised by counsel that under Canadian law, the bank, as guarantor, would be entitled to subrogation rights, including the right to enforce the foreign bank's priority lien against any underlying collateral.

Even though the loans are booked in the foreign bank, credit assessment and due diligence with respect to these loans are conducted by the bank. The bank rather than the foreign bank conducts a full credit analysis and investigation of the prospective Canadian borrower. The bank's credit committee approval for a U.S. borrower includes the Canadian dollar facility booked at the foreign bank for its Canadian subsidiaries. The bank assumes full credit responsibility for the Canadian facility on the date of any commitment to fund the loans.

You state that the bank is in a better position to arrange, negotiate, and close these loans since it has the customer relationship with the borrower or the borrower's parent. Moreover, the bank has the specially trained staff to perform the necessary credit assessments regarding loan customers in industries (such as energy, transportation, real estate, and utilities) not included in the foreign bank's "niche" business of factoring and lending to Quebec's textile industry. Duplicating this expertise and review process in the foreign bank would be inefficient and costly.

Discussion

No federal statue explicitly prohibits a national bank from indemnifying third parties, but it has long been established in case law that national banks cannot guaranty the obligation of another party or indemnify a party from loss. *See, e.g., Border Nat. Bank v. American Nat. Bank*, 282 F. 73, 77 (5th Cir.), *cert. denied*, 260 U.S. 701 (1922) (distinguishing a permissible letter of credit from an impermissible guaranty); *Merchants' Bank v. Baird*, 160 F. 642, 645 (8th Cir. 1908) (distinguishing permissible certification of a customer's checks from impermissible guaranty of a borrower's notes); *Bowen v. Needles Nat. Bank*, 94 F. 925, 928 (9th Cir. 1899), *cert. denied*, 176 U.S. 682 (1900) (finding a promise to pay checks of a third person who had no funds on deposit with the bank an impermissible guaranty); *see also* 9 C.J.S. *Banks and Banking* 661 (1979); 10 Am. Jur. 2d *Banks* 298 (1964).

An exception to this general rule is recognized when the guaranty is for the bank's own benefit and, therefore, incidental to the business of banking. *See Peoples Bank v. Manufacturers National Bank*, 101 U.S. 181 (1880) (concluding that "it was competent for the defendant [national bank] to give [its] guaranty" in connection with discounting and negotiating promissory notes). The OCC has codified this exception in an interpretive ruling which provides in relevant part:

> A national bank may lend its credit, bond itself as a surety to indemnify another, or otherwise become a guarantor, if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient in amount to cover the bank's total potential liability.

Interpretive Ruling 7.7010, 12 CFR 7.7010(a) (1990). The permissibility of national banks acting as guarantors of third party obligations also has been the subject of several letters issued by the OCC. *See, e.g.*, Letter No. 380 (December 29, 1986), *reprinted in* Fed. Banking L. Rep. (CCH) ¶ 85,604 (bank's interest in providing commodities clearing and futures commission merchant services to its customers as a clearing member of a commodities exchange is sufficient to permit it to assume liability on behalf of the other clearing members); No Objection Letter No. 86-23 (November 13, 1986), *reprinted in* Fed. Banking L. Rep. (CCH) ¶ 84,030 (bank's interest in creation of a company formed to become its holding company and acquire a second bank is sufficient for bank to assume company's liability for damages related to those transactions); Letter No. 376 (October 22, 1986), *reprinted in* Fed. Banking L. Rep. (CCH) ¶ 85,600 (interest in offering securities lending program is sufficient for bank to indemnify participating fiduciary account customers for losses); Letter No. 218 (September 16, 1981), *reprinted in* Fed. Banking L. Rep. (CCH) ¶ 85,299 (bank's interest in transactions involving its letter of credit is sufficient to permit it to guarantee related bills of lading). These letters reveal that "the issue of whether a national bank has a sufficiently 'substantial interest' to warrant a guarantee turns ultimately on whether the guarantee is validly incidental to another authorized activity of the bank involved in the transaction." Letter 376, *supra*.

Applying the foregoing to the bank's proposal, it is my conclusion that the bank may legally issue its guaranty under the circumstances you describe. The bank would be issuing its guaranty in connection with its lending activities authorized under 12 U.S.C. 24(7) and 601 *et seq*. Moreover, since the profit and loss on the loans booked in the foreign bank are reported on a fully consolidated basis in the bank's financial statements, the guaranty does not alter the bank's position with regard to credit risk arising from the loan transactions. This is particularly true since you have been advised that the bank, as guarantor, will have subrogation rights that will permit it to enforce certain of the foreign bank's rights against the borrowers. Finally, based on your representations, structuring the transactions in this fashion will allow the bank to take advantage of certain benefits accorded Canadian lenders and avoid certain requirements imposed on non-Canadian lenders. Together, these factors give the bank a sufficient interest in the loans from its foreign bank subsidiary to various corporate borrowers to permit the bank to guarantee the borrowers' repayment of those loans.

On the basis of the facts and representations set forth in your letter, the OCC will not interpose any legal objection to the bank's proposal. However, this letter expresses no opinion on whether this legally permissible activity is being conducted in accordance with principles of safe and sound banking. Accordingly, before proceeding the bank should ensure that the proposed activity does not raise any supervisory objections or involve the bank in an unsafe and unsound banking practice.

Eugene A. Marsico, Jr.
Acting Assistant Director
Legal Advisory Services Division

* * *

543 — February 13, 1991

This is in response to your letter of January 29, 1991, addressed to Mr. Joseph E. Vaez, referred to me for reply.

*** (bank) is presently considering the acquisition of one share of stock of a Delaware Corporation named *** (corporation), and you seek confirmation that such an acquisition would be permissible. The bank is a primary dealer of U.S. government securities. For several years, in response to a congressional mandate contained in section 104(a) of the Government Securities Act of 1986, the General Accounting Office, the Justice Department, and the Department of the Treasury have investigated and reported on the government securities market, with special attention to the lack of access by many participants in that market to adequate current trading information. To date, the information has been principally available to the primary dealers and their brokers. Congress has indicated that unless the industry provides informational access to all market participants, Congress will compel such access by law.

The proposed corporation is the industry's response to this congressional concern. The bank and a number of other primary dealers have funded a Public Securities Association (PSA) special task force, charged with devising the mechanism for enhanced information access. The PSA has proposed the formation of the corporation and the bank, as a primary dealer, believes that it is important to participate in this venture. The total exposure to the bank from such stock ownership, including the initial advance to the task force, amounts to $100,000. It is presently contemplated that substantially all primary dealers and certain interdealer brokers will be the shareholders of the corporation. Many of the banking organizations which are proposing to join this corporation as stockholders are doing so through their separately incorporated securities subsidiaries.

By joining in the project, the stockholders will undertake to furnish to a central collection point the relevant data

secondary trading. The data will be aggregated and made available to all market participants who subscribe to the service. The stockholders of the corporation will receive certain royalty payments and may also obtain dividend payments on the stock.

You believe that participation by the bank in this venture is properly characterized as incidental to its primary dealer business and hence permissible under the National Bank Act. You also cite as analogous previously authorized national banks' participation, through corporate share ownership, in SWIFT and in similar funds transfer organizations.

Based upon the information presented, I concur with your conclusion that the proposed ownership of one share in the corporation would be legal. The venture is incidental to the bank's activity as a primary dealer in U.S. government securities. Indeed, as you suggest, Congress may ultimately mandate some form of distribution of trading information to market participants if the primary dealers and their brokers do not take action. The stock ownership proposed is not for investment purposes, but rather is intended to allow the bank to engage in this limited, information-distribution function, as an adjunct to its primary dealer business.

You have cited as precedent national bank share ownership in SWIFT and in similar funds transfer organizations. I would also mention as being relevant Interpretive Letters No. 421, Mar. 14, 1988, [Transfer Binder 1988-89] Fed. Banking L. Rep. (CCH) ¶ 85,645, and No. 427, May 9, 1988, *id.* at ¶ 85,651. Interpretive Letter No. 421 permitted a bank to own shares in the Government Securities Clearing Corporation, established to provide automated comparison and netting services to the government securities market. The letter noted that ownership of the clearing corporation would be limited to key groups in the government securities business, such as primary dealers, government securities brokers, and clearing agent banks. This point is relevant to the bank's present proposal, since ownership of the corporation will be limited to primary dealers and their brokers.

Interpretive Letter No. 427, *supra*, allowed national banks to purchase stock in the Federal Agricultural Mortgage Corporation (popularly known as Farmer Mac). The letter pointed out that the general prohibition on stock ownership in 12 U.S.C. 24 (Seventh) was intended to prevent banks from engaging in speculative activity through stock investment. The proposed purchase of Farmer Mac stock was deemed permissible for two reasons: it was to be limited in amount and was not motivated by an investment objective. Instead, the stock ownership was intended to facilitate bank participation in the agricultural secondary mortgage market. Similarly, your bank's planned stock acquisition is limited in amount and not motivated by an investment objective. The corporation is essentially a vehicle to enable the bank and other primary dealers in U.S. government securities to deliver market information to trading participants.

Peter C. Liebesman
Assistant Director
Legal Advisory Services Division

* * *

544 — February 14, 1991

This responds to your June 21, 1990 letter regarding a proposal by the ***, to sponsor the formation of a workers' compensation group self-insurance program. You inquired whether the Office of the Comptroller of the Currency (OCC) would have any objections to the participation of national banks in this program. In my opinion, a national bank may not legally participate in the program.

The Proposed Self-Insurance Plan

Under Mississippi law, most employers are required to secure workers' compensation coverage from an insurance company unless exempted by the *** (the commission). One exemption relates to a group self-insurance pool. You have proposed that, pursuant to Miss. Code Ann. 71-3-75 and Commission General Rule 7, several banks and their affiliates and subsidiaries (the group) would enter into agreements to pool their liabilities to qualify with the *** as a self-insurance group.

Under your proposed self-insurance plan, members of the group would make premium contributions to a pool, either a trust or a corporation (the pool), and funds from the pool would pay workers' compensation claims of members' employees. To cover liability for a single or multiple claims exceeding a specified dollar amount, the group would obtain insurance in a form and amount acceptable to the commission. As security against unpaid claims in case of insolvency, the group would provide either a surety bond, financial security endorsement, payments into the self-insurance guaranty fund, or any combination thereof.

As required by the commission, each member of the group will agree to be jointly and severally liable for the workers' compensation obligations of the other members of the group.

After a member leaves the group, the member will remain liable for obligations of the group that were incurred during the member's period of membership.

Discussion

The OCC has, in the past, permitted national banks to participate in self-insurance plans through formation of a mutual insurance company. *See* Letter from Richard V. Fitzgerald, Chief Counsel (October 22, 1986); Letter from Larry A. Mallinger, Senior Attorney, Legal Advisory Services Division (March 13, 1987). Thus, in general, participation in self-insurance plans is a permissible activity for national banks.

The major obstacle to your proposal is the jointly and several liability that participating banks must assume for obligations of the group. In 1906, the United States Supreme Court held that a national bank does not have authority to become a general partner in a partnership because the bank would have to assume unlimited liability for obligations of the partnership. *Merchants National Bank v. Wehrman,* 202 U.S. 295 (1906). Although your proposed self-insurance plan would not be a partnership, a participating bank would, like a general partner in a partnership, assume unlimited joint and several liability for obligations of the group. *Wehrman* forbids a national bank to do this. I therefore conclude that a national bank may not participate in your proposed self-insurance plan.

Eugene A. Marsico, Jr.
Acting Assistant Director
Legal Advisory Services Division

* * *

545 — March 6, 1991

This responds to your letters, dated December 14, 1990 and January 14, 1991, inquiring about the permissibility of establishing electronic tax filing systems at two national banks. In my opinion, the proposed activities are permissible for national banks.

Internal Revenue Service form 8453 (U.S. Individual Tax Declaration for Electronic Filing) allows customers to authorizes electronic filing of their tax returns and direct deposit of their refund. You propose to receive these forms from customers and to forward the forms and customers' tax returns to Speed/S Corporation, which will then file the customers' tax returns electronically with the IRS. The bank will verify the accuracy of information on the form 8453 but will not interpret the tax laws.

OCC Interpretive Ruling 7.7430, 12 CFR 7.7430 authorized banks to assist members of the public in the preparation of tax returns, provided that the bank may not act as an expert tax consultant. The electronic filing service you propose falls within this authority. Moreover, assisting customers in preparing direct deposit forms is incidental to banks' deposit-taking function. Accordingly, the activity you propose is within the authority of a national bank.

Eugene A. Marsico, Jr.
Acting Assistant Director
Legal Advisory Services Division

* * *

No Objection Letters

91-1 — December 19, 1990

This responds to Deposit Guaranty's request of December 11, 1990, for a no objection position with respect to a proposed transaction. The holding company's request is submitted in accordance with the provisions of Office of the Comptroller of the Currency (OCC) Banking Circular 205 dated July 26, 1985. The request is being processed based upon information set forth in your letter of December 11, 1990, plus additional information communicated through the bank's outside counsel by telephone.

The Proposal

Deposit Guaranty Corporation (DGC) owns 98 percent of the stock of Deposit Guaranty National Bank (DGNB), Jackson, Mississippi, and owns all of the stock of Deposit Guaranty Omaha, N.A. (DGO), Omaha, Nebraska. DGNB is to acquire all of the credit card receivables of DGO and simultaneously sell them to an unaffiliated bank in the Midwest. It is your contention that the transactions are specifically authorized by 12 U.S.C. 24 (Seventh) and that a merger application pursuant to 12 U.S.C. 1828(c)(2) is not appropriate due to the unique circumstances existing in this proposal.

DGNB is a full-service national bank, with approximately $3.8 billion of assets. DGO was chartered by the OCC and commenced business at the beginning of 1986. Its business has been limited to being a credit card bank, and pursuant to Nebraska law, it may accept deposits only from affiliated banks located outside of Nebraska. DGO presently has approximately $90 million in credit card receivables. Its remaining assets of cash and other assets have a value of nearly $3.3 million. DGO was chartered in order that DGC could engage in a credit card business on an interstate basis on competi-

tive terms. These objectives could not be met at DGNB. At this time DGC has determined to discontinue its credit card business, and following the transfer of its credit card receivables DGO will commence liquidation proceedings under 12 U.S.C. 181.

When DGO was chartered, DGNB transferred to it all its credit card receivables, of which there were approximately $80 million. This transfer was financed by DGNB. DGNB has since provided additional financing for the operations of DGO. The total balance remaining on these loans is approximately $80 million, and will be repaid from the proceeds of the credit card receivables.

Discussion

In substance, DGNB proposes to acquire approximately $90 million in credit card receivables from its affiliate bank located in Nebraska. These receivables will then be transferred to a nonaffiliated bank in a separate transaction. Acquisition of credit card receivables is permissible pursuant to the provisions of 12 U.S.C. 24. This transaction is unusual in that DGNB has been providing the funding to its affiliate bank in Nebraska for the purpose of carrying these credit card receivables. As set forth in your letter, under the law of Nebraska, a credit card bank may only accept deposits from affiliated banks located outside of Nebraska. We are advised that these funds have been provided exclusively by DGNB. In essence, cancellation of the funding obligations would be offset by the return to DGNB of the credit card receivables. The remaining assets of DGO would be passed pursuant to a plan of liquidation consistent with the requirements set forth at 12 U.S.C. 181.

This transaction differs from the typical merger transaction in three significant ways: (1) the operations of Deposit Guaranty Omaha, N.A., have been viewed by the OCC in some respects as if DGO were an operating subsidiary of DGNB; (2) there is no proposed assumption of liabilities; and (3) the credit card receivables will pass to DGNB and will then immediately pass to a nonaffiliated bank pursuant to a purchase agreement.

Accordingly, inasmuch as the essence of this transaction is the purchase and subsequent sale of the credit card receivables by Deposit Guaranty National Bank, Jackson, Mississippi, the staff of the Office of the Comptroller of the Currency will not object to the proceeding with this transaction pursuant to the legal authority for a national bank set forth at 12 U.S.C. 24. This conclusion is based upon the facts presented in your letter of December 11, 1990. Please note that this view is based upon current law and practice, is subject to reconsideration, and should not be regarded as [illegible] ruling of the Comptroller.

H. Gary Pannell
Southeastern District Counsel

Attachment

December 11, 1990

H. Gary Pannell
District counsel
Southeastern District
Office of the Comptroller of the Currency
Marquis One Tower
Suite 600
245 Peachtree Center Avenue, N.E.
Atlanta, Georgia 30303

Re: 12 U.S.C. Sections 24 Seventh and 1828(c)(2)

Dear Mr. Pannell:

In accordance with Banking Circular 205 dated July 26, 1985, Deposit Guaranty Corp. (DGC) requests a no objection position with respect to the following transaction.

DGC owns 98 percent of the stock of Deposit Guaranty National Bank (DGNB), Jackson, Mississippi, and owns all of the stock of Deposit Guaranty Omaha, N.A. (DGO), Omaha, Nebraska. DGNB is to acquire all of the credit card receivables of DGO and simultaneously sell them to an unaffiliated bank in the Midwest. It is our contention that the transactions are specifically authorized by 12 U.S.C. Section 24 Seventh and that no merger application would be required by the OCC under 12 U.S.C. Section 1828(c)(2).

DGNB is a full service national bank, with approximately $3.8 billion of assets. DGO was chartered by the Office of the Comptroller of the Currency (OCC) and commenced business at the beginning of 1986. Its business has been limited to being a credit card bank, and pursuant to Nebraska law it may accept deposits only from affiliated banks located outside of Nebraska. DGO presently has approximately $90 million in credit card receivables. Its remaining assets consist of cash, fixed assets, Federal Reserve Bank stock, and other receivables related to the credit card program. They have a value of nearly $3.3 million. DGO was chartered in order that DGC could engage in a credit card business on an interstate basis on competitive terms. These objectives could not be met at DGNB. At this time DGC has determined to discontinue its credit card business, and following the transfer of its credit card receivables, DGO will commence liquidation proceedings under 12 U.S.C. Section 181.

When DGO was chartered, DGNB transferred to it all its credit card receivables, of which there were approximately $80 million. This transfer was financed by DGNB. DGNB has since provided additional financing for the operations of DGO. The total balance remaining on these loans is approximately $80 million, and will be paid from the proceeds of the credit card receivables.

The buying and selling of loans is an express power of national banks specifically authorized under 12 U.S.C. Section 24 Seventh. Clearly, credit card receivables are promissory notes, drafts, or other evidences of debt. The only assets being purchased and sold by DGO and DGNB will be loans, and not any of the other assets of DGO. These remaining assets will pass pursuant to a plan of liquidation which will be developed for DGO in accordance with applicable law following the transfer of its credit card receivables. Questions have arisen concerning the sale of low quality assets to an affiliate under 12 U.S.C. 371a. We have attached, for your information, a letter from DGC dated November 9, 1990, to Virgil Mattingly, General Counsel of the Board of Governors of the Federal Reserve System, on this subject.

Although 12 U.S.C. Section 1828(c)(2) could be read literally to require the use of a merger application in connection with the above described transaction, this reading would be inconsistent with the plain intent of the statue. The statue would require the use of a merger application when an insured depository institution, "acquire(s) the assets of or assume(s) liability to pay any deposits made in, any other insured depository institution. . . ." If read literally, any time one bank acquired any of the assets of another bank a merger application would be required. This is certainly contrary to normal practice and OCC policies. Indeed, nowhere in the OCC's regulations, interpretive rulings, published opinions, or the *Manual for Corporate Activities* is there a requirement that a merger application be utilized in the above described situation.

In the matter at hand, all of the loans of DGO are being acquired, but none of the liabilities are being assumed. The loans being acquired by DGNB are virtually the same amount and type of loans that were transferred to DGO by DGNB four years ago. In effect, this transaction is merely a corporate reorganization, followed by the sale by DGNB of one of its lines of business. This line of business would represent less than 2.5 percent of DGNB's assets.

In addition, the purpose of requiring a merger application is set out in 12 U.S.C. Section 1828(c)(5). It is clear that the proposed transaction would have no effect upon competition or the convenience and needs of the community being served. Furthermore, ". . . the financial and managerial resources and future prospects of the existing and proposed institutions . . ." do not appear relevant and are not at issue. Finally, there is no concern in the proposed transaction with respect to the protection of depositors or investors.

Credit card banks did not exist when 12 U.S.C. Section 1828(c)(2) was enacted, and clearly this statute is not applicable in this situation. The arguments above are buttressed by the OCC's own policies and practices in treating DGO as virtually an operating subsidiary of DGNB. For example, DGO's charter was applied for, and approved, by the OCC's Southeastern District where DGNB is located. Moreover, examiners from the Southeastern District, and not the Midwestern District, examine DGO.

In conclusion, we request a no objection position with respect to our proceeding in the above transaction pursuant to the specific authority granted by 12 U.S.C. Section Seventh without filing a merger application. The application of 12 U.S.C. Section 1828(c)(2) to this transaction would be inconsistent with 12 U.S.C. Section 24 Seventh and OCC policies and practices and would not further public policy, the interests of shareholders or depositors, or provide any other ascertainable benefit.

Attachment

November 9, 1990

J. Virgil Mattingly, Jr.
General Counsel
Board of Governors of the Federal Reserve System
Federal Reserve Building
Washington, D.C. 20551

Dear Mr. Mattingly:

We are writing to you at the suggestion of Ed Willingham, General Counsel of the Federal Reserve Bank of Atlanta. Deposit Guaranty Corp. requests your opinion that the transaction described below does not involve a prohibited transfer of a low quality asset within the meaning of Section 23A of the Federal Reserve Act (12 USC Section 371c). In the alternative, we request an exemption of the following described transaction from that prohibition.

In 1985, Deposit Guaranty Corp. (DGC) organized Deposit Guaranty Omaha, National Association (DGO), a wholly owned, limited purpose national bank located in Omaha, Nebraska for the purpose of acquiring the existing credit card operations of Deposit Guaranty National Bank, Jackson, Mississippi (DGNB), a 97 percent owned subsidiary bank of DGC. Approval was

qualified by the Federal Reserve Board under Section 3 of the Bank Holding Company Act for the acquisition of DGO by DGC. Under Nebraska state law, the activities of DGO are limited to credit and transaction card operations.

On January 6, 1986, the existing credit card portfolio of DGNB, comprising approximately $80 million in credit card receivables, was transferred to DGO for book value less a portion for loan loss reserves. DGNB financed the sale through a 10 year term loan which has a remaining principal balance as of September 30, 1990, of approximately $27 million. DGNB has also provided additional financing for the operations of DGO through a line of credit which has a principal balance as of September 30, 1990, of approximately $53 million. The current size of the credit card portfolio of DGO is approximately $90 million in credit card receivables.

DGC has determined for several reasons, including the relatively high premiums being paid in the marketplace for credit card portfolios, to place the credit card portfolio of DGO on the market. A prospective third party purchaser (Purchaser) has been identified and the parties are negotiating the final terms of a purchase and sale agreement. Purchaser will acquire all credit card accounts of DGO excluding only those accounts charged off prior to the sale and specifically including past due accounts and any others which might be considered low quality assets under Section 23A.

In order to strengthen capital and earnings of DGNB, DGC desires for the sale of assets of DGO to flow through DGNB. DGO will transfer the assets to DGNB at book value and DGNB will simultaneously resell the assets to Purchaser at market value (*i.e.* book value plus the agreed upon premium). The transfer from DGO to DGNB will be contingent upon and simultaneous with the resale to Purchaser, and only those assets to be resold to Purchaser will be transferred by DGO to DGNB.

The purchase price paid by DGNB to DGO will be used by DGO to repay its indebtedness to DGNB with the balance to be retained by DGO. Unless a potential acquirer of DGO is identified in the near future, DGO will likely go into voluntary liquidation some time after the sale is completed.

It is contemplated by the parties that DGO may have to provide some form of right of recourse for a limited period of time of six months to one year for past due and certain other "statused" accounts which are sold to Purchaser. In the event DGO enters into voluntary liquidation, that obligation will be assumed by DGC. In the alternative, DGNB may agree to provide this limited right of recourse; however, it will not do so unless indemnified by DGO and DGC. DGNB will bear no risk of loss with respect to any past due accounts or other low quality assets which it might receive from DGO in the sale to Purchaser.

It is our opinion that the transaction as contemplated would not involve a prohibited transfer of low quality assets to DGNB within the meaning of Federal Reserve Act Section 23A since the transfer from DGO to DGNB is contingent upon and simultaneous with the transfer to Purchaser and since DGNB bears no risk of loss on any low quality assets. We request your concurrence on this question. In the alternative, if it is determined that the transaction as described would involve a prohibited transfer of a low quality asset, we request an exemption from that prohibition because of the nature and structure of the transaction and the absence of risk to DGNB. For your information, a similar letter will be written to the Office of the Comptroller of the Currency on matters related to this transaction within its jurisdiction.

It is extremely important to the parties that the transaction be completed before year-end. We would sincerely appreciate your urgent consideration of this request. If you require additional information, please contact me at my letterhead address and telephone number. Thank you for your consideration and assistance.

* * *

Investment Securities Letters

44 — October 10, 1990

This letter is to inform you that the Office of the Comptroller of the Currency (OCC) is conducting an informal investigation of the program being offered by the bank. The program generally provides for the bank's corporate deposit customers to enter into agency agreements with the bank. The bank agrees to sweep into its parent company's *** (holding company), commercial paper any funds in excess of a determined amount in the customer's deposit account. These funds will remain in the holding company's commercial paper until maturity (270 days) unless the customer terminates the program (after five days' notice to the bank), the customer makes demand for payment, or the customer's deposit account falls below the determined amount and funds are required to be transferred from the program account. The following discussion reflects the OCC's most immediate concern related to this program.

The bank's sale of the commercial paper through the sweep accounts is subject to the antifraud provisions of the federal securities laws. Securities Act of 1933, 17, 15 U.S.C. 77q. *See also* Securities Exchange Act of 1934, 10, 15 U.S.C. 78j; Rule 10b-5, 17 CFR 240.10b-5. In that regard, we note that there has been much media coverage concerning the condition of the holding company.

As a result, it is our understanding that the bank and the holding company have received many customer inquiries regarding the program. The OCC's present concern is focused on the disclosures made by the bank in response to those inquiries. Any disclosures provided must be accurate and include all material facts the omission of which would make the statements made, in the light of the circumstances under which they were made, misleading. *See* Securities Act of 1933, 17, 15 U.S.C. 77q.

On September 19, 1990, a memorandum entitled "COMMENTS ON *** COMMERCIAL PAPER" was circulated internally among bank employees. These comments outline the information which employees can provide to customers and to the public in response to questions concerning the program. *** Finally, even though the agency agreements clearly state that the commercial paper is not an insured deposit, in the interests of full disclosure and as matter of safe and sound banking, we strongly suggest that the bank remind all customers participating in the program who make inquiries regarding the holding company commercial paper that it is not insured by the Federal Deposit Insurance Corporation.

In view of the foregoing, the bank is requested to undertake an immediate and thorough review of its representations to investors in connection with the program and provide an analysis of the federal securities law disclosure requirements on the bank, if any, in light of such representations and in light of information known to the bank concerning the credit position of holding company issuer of the commercial paper. Issues addressed should specifically include whether the holding company commercial paper has retained its exemption under the Securities Act of 1933; what effect the loss of that exemption would have on the program; and whether there are any continuing disclosure obligations to those customers who entered the program with the understanding that the commercial paper had a particular rating.

Stephen R. Steinbrink
Deputy Comptroller
Multinational Banking

* * *

45 — October 31, 1990

This will acknowledge receipt of your letter dated October 23, 1990, filed with the Office of the Comptroller of the Currency (OCC) regarding the proposed affiliated bank merger of ***, with and into *** a national bank (***). ***, an Indiana multibank holding company, beneficially owns 100 percent, less directors' qualifying shares, of ***, a one bank holding company, which in turn beneficially owns 100 percent of ***. In addition, *** Bancorp beneficially owns 91.11 percent of *** The remaining 8.89 percent of *** is owned by approximately 78 shareholders.

In your letter, you request (i) a waiver of the requirement that an information or proxy statement be filed and mailed to *** shareholder, (ii) a waiver of the public notice requirement relating to *** shareholders meeting to approve the merger, and (iii) a waiver of the requirement that notice of the shareholders meeting be mailed to the sole shareholder of ***.

Ordinarily, where a state bank is merging into a national bank, the OCC would require both the national bank and the state bank to prepare proxy or information statements which, after being reviewed by the OCC, the banks would distribute to their shareholders in anticipation of a shareholder vote. Because *** is a wholly owned subsidiary of *** Bankcorp (with the exception of directors' qualifying shares), the OCC will waive compliance with the proxy and information statement rules of 12 CFR 11 with respect to ***.

Regarding your other waiver requests, 12 U.S.C. 215a(a)(2) provides, among other things, that a state bank merging into a national bank must (i) publish in a newspaper of general circulation for four consecutive weeks prior to the shareholders meeting held to approve the merger, notice of the time, place, and object of the meeting, and (ii) send notice of such meeting to each shareholder of record by certified or registered mail at least ten days prior to the meeting. Section 215a(a)(2) expressly provides that notice by mail need not be provided to a shareholder who specifically waives such notice. Accordingly, provided *** has waived its right to notice by mail, a waiver of such notice by the OCC is not required.

Section 215a(a)(2) also provides for waiver of the publication requirement, by stating, in pertinent part, that the "[p]ublication of notice may be waived, in cases where the Comptroller determines that an emergency exists justifying such waiver, by unanimous action of the shareholders of the association or State banks." 12 U.S.C. 215a(a)(2). The plain language of this provision suggests that absent a determination that an emergency exists justifying a waiver, the OCC may not waive the

publication requirement contained in section 215a(a)(2). Nonetheless, the fact that the statute contemplates that the publication requirement may be waived by the unanimous vote of a bank's shareholders demonstrates that the publication requirement is for the benefit of the shareholders. Because a wholly owned bank has only one shareholder (the holding company), and because generally a sole shareholder may approve an action by written consent in lieu of a shareholders meeting, there is no need to publish notice of the meeting, i.e., there is no need for the shareholder protection that publication of the shareholders meeting affords. *See Comptroller's Manual For Corporate Activities*, Section 21.1, p.6 (December 1987). Accordingly this office will not require *** to publish notice of the shareholder meeting. Please note, however, that the bank must comply with the publication requirements contained in the Bank Merger Act, 12 U.S.C. 1828(c). Under the Bank Merger Act, notice of the merger application must be published three times in a newspaper of general circulation in the community in which the main office of each of the banks is located. The notice must be published at approximately two week intervals over a thirty day period beginning with the day the application is filed with the OCC. When published in a daily newspaper, the final publication must be on the 30th day after the date of the initial publication or the closest day thereafter. All notices should be published in the joint names of all the banks involved in the transaction. *See* 12 U.S.C. 1828(c)(3); 12 CFR 5.8; and *Comptroller's Manual For Corporate Activities*, section 21.1, p.5 (December 1987).

These conclusions are based on the facts as you have represented them in your letter. Any material change in these facts may require a different result. Additionally, this letter does not address or affect any publication or notice requirements that may be mandated by state law.

You are reminded that it is the obligation of all parties involved to ensure their compliance with all applicable laws, including the antifraud provisions of the federal securities laws. *See* 15 U.S.C. 77q and 78j; 17 CFR 240.10b-5.

Randall M. Ryskamp
Attorney
Securities and Corporate Practices Division

* * *

46 — November 21, 1990

[illegible] letter of October [illegible], 1990, to Kathy Pawley of [illegible], you requested an opinion as to whether sales of the bank's common stock by the bank's employee benefit plan (plan) would constitute an indirect offering under the provision of 12 CFR 16.3 by the bank, thereby requiring that the sales, absent an appropriate exemption, only be made through the use of an offering circular.

The stock of the bank is presently registered, pursuant to the provisions of section 12(b) of the Securities Exchange Act of 1934, and is publicly traded and quoted on the Exchange. You represented that the plan presently holds approximately 2.8 percent of the bank's common stock which it purchased directly from the bank, which is not a controlling interest in the bank's stock. The plan contemplates selling shares of the bank's common stock on a quarterly basis, as such shares become attributable to employees or their beneficiaries pursuant to the provisions of the plan. You further represented that it is not contemplated that the plan would ever hold a controlling interest in the common stock of the bank.

Section 16.3(a) prohibits national banks from directly or indirectly selling any security of which it is the issuer unless the sale is made through the use of an offering circular which has been filed with, and declared effective by, the OCC. 12 CFR 16.3(a).

Because the sales which are contemplated by the plan are sales by a holder of a minority interest in the bank, we do not believe that there is an identity of interest between the plan and the bank such that the contemplated sales would amount to an indirect offering by the bank. Therefore, the provisions of 12 CFR 16 should not apply to the contemplated sales by the plan. The plan may, thus, make the sales without the bank's having to provide an offering circular in connection therewith.

Please note, however, that this opinion in based solely upon the facts and representations as presented. Should the plan at any time be deemed to hold a controlling interest in the bank, or should any of the other representations described in your letter change, the bank should notify this division immediately. Further, the bank is reminded that while the bank is not required to provide an offering circular in connection with the sales by the plan as described above, the antifraud provisions of the federal securities laws are still applicable to any sales by the plan.

William T. Dehnke
Assistant Director
Securities and Corporate
Practices Division

* * *

47 — December 27, 1990

This responds to your letter dated October 12, 1990, to Dean E. Miller, Senior Advisor For Fiduciary Responsibilities, and subsequent conversations with Randall M. Ryskamp, Attorney, Securities and Corporate Practices Division, regarding the establishment and operation of *** (the common trust fund) by *** (***), wholly owned subsidiary of ***, National Association. ***, a trust company organized and subject to the laws and regulations applicable to national banks by virtue of 12 CFR 5.34(d)(2). The purpose of your letter to Mr. Miller was to seek authorization under 12 CFR 9.18(c)(5) on behalf of *** for certain special features of the common trust fund discussed more fully below. In particular, you have requested that the Office of the Comptroller of the Currency (OCC) waive (a) the 10 percent participation limitation contained in 12 CFR 9.18(b)(9)(i), and (b) the exclusive management requirement contained in 12 CFR 9.18(b)(12). For the reasons set forth below, the request by *** for a waiver of the 10 percent participation limitation is granted pursuant to 12 CFR 9.18(c)(5), and the request for a waiver of the exclusive management requirement is reserved pending further consideration.

Background

In your letter to Mr. Miller you indicated that the facts underlying the establishment of the common trust fund are as follows.

(*** facility), is owned by 12 investor-owned and municipal utility companies (the *** participants) whose ownership interests vary from under 0.1 percent to over 35 percent. Under both federal and *** law, the *** participants are financially responsible for the cost of the permanent shutdown or decommissioning of the *** facility, and *** law mandates the creation of a "Nuclear Decommissioning Financing Fund" in connection with these responsibilities. Accordingly, *** (the managing agent), as agent for the participants, entered into the *** Nuclear Decommissioning Financing Fund Master Trust Agreement (the Master Trust Agreement) effective October 11, 1988. Other parties to the Master Trust Agreement include the Treasurer of the State of *** and ***. Under the Master Trust Agreement, *** is designed as sole trustee of separate trusts (the decommissioning trusts) created under the Master Trust Agreement for the purpose of accumulating the funds necessary to finance the decommissioning of the *** facility currently anticipated to occur in the year 2030. The settlor of each decommissioning trust is one of the *** participants.

In order to comply with the requirements of section 468A of the Internal Revenue Code, a *** participant may establish two decommissioning trusts, i.e., a trust qualified under section 468A and a trust not qualifying under that provision. The Master Trust Agreement specifically authorizes ***, as trustee, to mingle or combine any of the investments or property of the decommissioning trusts in a common fund or funds (the decommissioning common trusts), each subject to specific investment guidelines.

Under the terms of the Master Trust Agreement, the decommissioning trusts possess a number of special features which, you believe, preclude their participation in a common trust fund that includes other trust accounts of ***. One such feature is the investment goal of each decommissioning trust of maximizing appreciation of capital over the 40 years prior to the anticipated decommissioning of the *** facility. Consistent with this purpose, there are very strict limitations on the withdrawal of assets from the decommissioning trust during the period prior to decommissioning. Also, under section 468A of the Internal Revenue Code and proposed regulations of the Internal Revenue Service, the assets of the "qualifying" decommissioning trusts may only be invested in specifically designated types of securities and may not be commingled with assets other than those of other decommissioning trusts.

Another special feature of the decommissioning trusts is the existence and role of the managing agent for each and every decommissioning trust. The managing agent possesses the exclusive power to allocate and reallocate assets of a decommissioning trust among the decommissioning common trusts.

The managing agent also possesses the authority to direct *** as trustee, to invest the assets of each decommissioning trust or decommissioning common trust in certain types of investments, or even certain specific investments authorized under investment guidelines established under and attached to the Master Trust Agreement. Moreover, the managing agent, subject to approval of the Treasurer of the State of *** may appoint one or more fund managers possessing the power to similarly direct the trustee with regard to the trustee's management of one or more decommissioning trusts or decommissioning common trusts. The Master Trust Agreement also provides for the retention of an investment consultant with responsibility for annual review and where appropriate, revision of the investment guidelines established under the Master Trust Agreement subject to the approval of the managing agent and the Treasurer of the State of ***

As noted in your letter, these special provisions are inconsistent with certain of the OCC's regulations governing collective investment funds set forth in 12 CFR 9.18. In particular, the common trust fund, as

currently structured, would not comply with the participation limitation contained in 12 CFR 9.18(b)(9)(i) and may not comply with the exclusive management requirement contained in 12 CFR 9.18(b)(12). Accordingly, in your letter to Mr. Miller, you requested that the OCC authorize these special features under 12 CFR 9.18(c)(5). In a subsequent telephone conversation with Mr. Ryskamp, you stated that in order to expedite the establishment of the common trust fund, the managing agent has agreed in writing that it will not, without the specific prior written approval of the OCC, (a) exercise its authority to direct *** as trustee, to invest the assets of the common trust fund (including the decommissioning common trusts established thereunder) in certain types of investments or specific investments or (b) appoint one or more fund managers possessing the power to similarly direct ***, as trustee, with regard to the management of the common trust fund (including the decommissioning common trusts established thereunder). Until such approval by the OCC is granted, *** will have and maintain exclusive management over the common trust fund as required by 12 CFR 9.18(b)(12).

Analysis

As previously noted, there are currently 12 *** participants the interests of which vary from under 0.1 percent to over 35 percent of the *** facility. Under applicable law, each *** participant is required to bear a pro rata share of the decommissioning cost. Accordingly, the amount needed to satisfy the decommissioning obligation of the largest joint owner will be more than 350 times the amount needed by the smallest joint owner.

Pursuant to 12 CFR 9.18(b)(9)(i), "[n]o funds or other property shall be invested in a participation in a collective investment fund if as a result of such investment the participant would have an interest aggregating in excess of 10 percent of the then market value of the fund . . . ." The 10 percent participation limitation contained in 12 CFR 9.18(b)(9)(i) was in large part designed to provide extra protection for small participating trusts over and above the normal fiduciary responsibilities delineated under state law by preventing undue domination of a fund by a single participating account and by facilitating the participation of small trusts in a fund. *See* 55 Fed. Reg. 4184, 4190-4191 (February 7, 1990). These safeguards would not be necessary in the present case. There is little danger of domination of the common trust fund by a large participant inasmuch as all of the *** participants have the same investment goal, i.e., maximizing appreciation of capital over the 40 years prior to the anticipated decommissioning of the *** facility. Indeed, imposition of the 10 percent limitation in the instant case would be detrimental to the small *** participants because it would prevent them from "enjoy[ing] greater diversification an wider investment opportunities than would otherwise exist" if they were not able to participate in the common trust fund with the larger *** participants. *See Investment Company Institute v. Conover*, 790 F.2d 925, 928 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 939 (1986).[1] Moreover, to the extent that it would prevent one or more of the *** participants from obtaining the benefits afforded by the investment of trust assets in common trust funds, the 10 percent limitation could impede the financial ability of the *** participants to meet their obligations to the United States Nuclear Regulatory Commission, other governmental bodies, and the general public in connection with the decommissioning of the *** facility.

There is also little danger that the smaller *** participants would be subject to the potential ill effects of a withdrawal by a large *** participant because only the managing agent for all of the decommissioning trusts may generally effect a withdrawal of the funds from a particular investment fund of the common trust fund. Because the managing agent owes an equal duty to each decommissioning trust it serves, the possibility that the interests of one of the *** participants would be placed above those of another participant is diminished. Accordingly, the OCC believes that the incremental protection normally afforded to small trusts by the 10 percent participation limitation contained in section 9.18(b)(9)(i) would be unavailing in the instant case, and that the special needs of all of the *** participants together with the public policy considerations associated with the decommissioning of the *** facility warrant a waiver of the 10 percent participation limitation. Therefore, the request by *** for a waiver of the 10 percent participation limitation contained in 12 CFR 9.18(b)(9)(i) is granted pursuant to 12 CFR 9.18(c)(5).[2]

As noted above, in order to expedite the establishment of the common trust fund, the managing agent has agreed not to exercise its authority to direct ***, as trustee, with respect to the investment of assets contained in the common trust fund (including the decom-

[1]Given the unique investment objectives of the participants and the specific investment guidelines and limitations contained in the Master Trust Agreement and the common trust fund, the assets of the decommissioning trusts could not be commingled with other trust assets administered by ***.

[2]As you may know, the OCC has recently proposed to remove the participation limitation contained in 12 CFR 9.18(b)(9)(i). *See* 55 Fed. Reg. 4184 (February 7, 1990). The OCC's decision to waive the participation limitation in the present case should in no way be construed as an indication that the OCC will ultimately adopt its proposal to remove the participation limitation contained in section 9.18(b)(9)(i).

missioning common trusts established thereunder) or to appoint one or more fund managers possessing the power to similarly direct *** with respect to the investment of assets contained in the common trust fund, without the prior specific written approval of the OCC.[3] Accordingly, until such time as OCC approval is obtained, ***, as trustee, has represented that it will have exclusive management of the common trust fund, as required by 12 CFR 9.18(b)(12).

Given the commitments made by the managing agent, the OCC will not object to the establishment of the common trust fund in the manner that you have described, pending its further consideration of the trustee's continuing ability to exercise exclusive management, and conditioned expressly on the existence and observance of the agreement between the managing agent and *** as trustee.

Please note that this position is based on the facts and representations made in your letter and telephone conversations with the OCC and that any material changes in the facts or representations may result in a different conclusion. In particular, if the managing agent violates its agreement to refrain from directing *** with respect to the investment of assets contained in the common trust fund or violates its agreement to refrain from appointing one or more fund managers possessing similar investment authority, *** will be considered to be in violation of the exclusive management requirement of 12 CFR 9.18(b)(12). Please also note that while the OCC will continue to assess the permissibility of the managing agent's investment authority as contemplated under the common trust fund, there can be no assurances that the OCC will ultimately permit the managing agent to exercise such investment authority or to appoint one or more fund managers possessing similar investment authority.

Susan F. Krause
Senior Deputy Comptroller
Bank Supervision Policy

* * *

48 — May 3, 1990

This is in regard to your letter, on behalf of *** requesting the staff of the Office of the Comptroller of the Currency (OCC) to take a no objection position with regard to charging the cost of a *** research publication to collective investment trust funds of banks that are invested in guaranteed investment contracts (GICs).

*** publishes an analytical index of the performance of GIC pooled investment funds across the nation. The annual subscription fee for the service generally would be ***. *** requests assurance that the OCC would not object if *** advises banks that this fee may be charged as an administrative expense to the collective investment funds. *** would advise banks that subscribe to the service that disclosure of the expense would be necessary.

You have stated that the investment analysis service provided by the publication would enable a bank, charged with the responsibility for management and control of a GIC fund, to assess the performance of the fund or investment advisors for the fund against independent standards. Accordingly, you believe a bank should be able to subscribe to the service. In addition, you believe the bank should be able to charge the service to the collective investment fund on the basis that certain research services purchased by fiduciaries are chargeable to collective investment funds pursuant to so-called "soft dollar" arrangements involving packages of brokerage and research services.

A national bank administering a collective investment fund must have exclusive management of the fund. 12 CFR 9.18(b)(12). The bank's obligation to manage the fund includes the responsibility to determine the appropriate investment of fund assets. The *** service is a research service that might be used by the bank in fulfilling its management role with regard to the appropriate investment of assets of a fund designed to enable customers to invest on a collective basis in GICs. Thus, it may be appropriate for a bank to subscribe to the service if the bank is managing a fund designed to enable customers to invest on a collective basis in GICs.

A national bank is entitled to charge a fee for the management of the collective investment fund. 12 CFR 9.18(b)(12). Where it is appropriate for a bank to subscribe to the service in fulfillment of the bank's management role, the subscription fee may be included in the management fee. The bank's management fee to the fund is disclosed and specifically authorized.

Please be advised, however, of the limitations under 12 CFR 9.18(b)(12) on the management fee a bank charges to a collective investment fund. As may be relevant to a bank considering the *** service, the fractional part of the fee proportionate to the interest of each participant may not, when added to any other compensations charged by a bank to the participant, exceed the

[3] It should be noted, however, that the managing agent, or fund managers appointed by the managing agent, may make investment recommendations to *** provided that all final investment decisions rest with *** as trustee.

total amount of compensations which would have been charged to the participant if the assets of the participant had been invested in participations in the fund. This restriction prohibits a bank from charging a participant directly or indirectly through the fund, higher fees for investing the participant's assets collectively than the bank would charge for non-collective investment of the assets.

There are trust interpretations of the OCC that permit certain expenses in addition to the management fee to be charged to trust accounts, because the expenses are not restricted or prohibited under 12 CFR 9.18. In general, these are auditing fees, taxes, legal expenses, and commissions. *See National Trust Examiner's Handbook* section 1101.6, paragraph 9.5300. Although certain research expenses have been permitted to be charged separately from the management fee under certain "soft dollar" arrangements, these cases involve packages of brokerage and research services. Fiduciaries are expressly authorized pursuant to section 28(e) of the Securities Exchange Act (15 U.S.C. 78bb(3)) to pay for these bundled services with commission dollars. As we understand the facts, the *** is a separate research service and not part of a brokerage service package. Accordingly, section 28(e) does not appear to apply.

As was previously advised you, the OCC is seeking public comment until May 8, 1990, on a proposed rulemaking that would modify the existing federal fee restriction on collective investment funds managed by national banks. The proposal would establish a regulatory approach that generally would allow an institution to charge its collective investment funds for expenses within the constraints of state law pertaining to fees for fiduciary services. 55 *Federal Register* 4184, 4193, 4197 (February 7, 1990). If adopted by the OCC, the proposed rulemaking may provide a basis for providing and charging participants for a broad range of services subject to appropriate disclosure.

Kay E. Bondehagen
Senior Attorney
Securities and Corporate
Practices Division

* * *

Mergers — January 1 to March 31, 1991

Mergers consummated involving two or more operating banks.

Mergers consummated involving national banks and savings and loan associations.

A number of transactions in this section do not have an accompanying decision. In those cases, the OCC reviewed the competitive effects of the proposals by using its standard procedures for determining whether the transaction has minimal or no adverse competitive effects. The OCC found the proposals satisfied its criteria for transactions that clearly had no or minimal adverse competitive effects.

HELENA NATIONAL BANK,
Helena, Arkansas, and Bank of Marvell, Marvell, Arkansas

Names of institutions and type of transaction	*Total assets*
Helena National Bank, Helena, Arkansas (14429), with	$61,432,000
and Bank of Marvell, Marvell, Arkansas, with	17,579,000
merged March 15, 1991, under charter and title of the former. The merged bank at date of merger had	79,011,000

* * *

WELLS FARGO BANK, NATIONAL ASSOCIATION,
San Francisco, California, and El Camino Bank, Anaheim, California, and Citizens Bank of Costa Mesa, Costa Mesa, California

Names of institutions and type of transaction	*Total assets*
Wells Fargo Bank, National Association, San Francisco, California (1741), with	$ 48,488,095,000
and El Camino Bank, Anaheim, California, with	127,222,000
and Citizens Bank of Costa Mesa, Costa Mesa, California, with	135,840,000
merged January 1, 1991, under charter 1741 and title "Wells Fargo Bank, National Association." The merged bank at date of merger had	48,738,009,000

* * *

SECURITY PACIFIC NATIONAL BANK,
Los Angeles, California, and Security Pacific Asian Bank, National Association, Los Angeles, California

Names of institutions and type of transaction	*Total assets*
Security Pacific National Bank, Los Angeles, California (2491), with	$ 62,475,000,000
and Security Pacific Asian Bank, National Association, Los Angeles, California (21841), with	486,000,000
merged March 7, 1991, under charter and title of the former. The merged bank at date of merger had	62,960,000,000

* * *

UST CALIFORNIA, NATIONAL ASSOCIATION
Los Angeles, California, and Manilabank California, Los Angeles, California

Names of institutions and type of transaction	*Total assets*
UST California, National Association, Los Angeles, California (22413), with	—
and Manilabank California, Los Angeles, California, with	—
merged March 8, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

THE FIRST NATIONAL BANK OF LIMON,
Limon, Colorado, and Citizens National Bank, Limon, Colorado

Names of institutions and type of transaction	*Total assets*
The First National Bank of Limon, Limon, Colorado (11504), with	$ 31,469,000
and Citizens National Bank, Limon, Colorado (17421), with	—
merged March 29, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

THE NEW CONNECTICUT BANK AND TRUST COMPANY, NATIONAL ASSOCIATION,
Hartford, Connecticut, and The Connecticut Bank and Trust Company, National Association, Hartford, Connecticut

Names of institutions and type of transaction	Total assets
The New Connecticut Bank and Trust Company, National, Association, Hartford, Connecticut (22174), with	—
and The Connecticut Bank and Trust Company, National Association, Hartford, Connecticut, with	—
merged January 6, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

THE CITIZENS AND SOUTHERN NATIONAL BANK OF FLORIDA,
Fort Lauderdale, Florida, and The Citizens and Southern Bank of Duval County, Neptune Beach, Florida

Names of institutions and type of transaction	Total assets
The Citizens and Southern National Bank of Florida, Fort Lauderdale, Florida (14376), with	$ 3,702,376,000
and The Citizens and Southern Bank of Duval County, Neptune Beach, Florida, with	166,464,000
merged March 1, 1991, under charter and title of the former. The merged bank at date of merger had	3,777,228,000

. . .

RIVERSIDE NATIONAL BANK OF FLORIDA,
Fort Pierce, Florida, and Seafirst Bank, Port St. Lucie, Florida

Names of institutions and type of transaction	Total assets
Riverside National Bank of Florida, Fort Pierce, Florida (17437), with	$ 178,711,000
and Seafirst Bank, Port St. Lucie, Florida, with	—
merged March 8, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

FARMERS-MERCHANTS NATIONAL BANK OF PAXTON,
Paxton, Illinois, and Melvin State Bank, Melvin, Illinois

Names of institutions and type of transaction	Total assets
Farmers-Merchants National Bank of Paxton, Paxton, Illinois (14458), with	$ 38,893,000
and Melvin State Bank, Melvin, Illinois, with	9,596,000
merged January 1, 1991, under charter and title of the former. The merged bank at date of merger had	48,490,000

. . .

CITIZENS FIRST NATIONAL BANK OF PRINCETON,
Princeton, Illinois, and Citizens First National Bank of Oglesby, Oglesby, Illinois

Names of institutions and type of transaction	Total assets
Citizens First National Bank of Princeton, Princeton, Illinois (2413), with	$ 179,269,000
and Citizens First National Bank of Oglesby, Oglesby, Illinois (14446), with	29,230,000
merged January 1, 1991, under charter and title of the former. The merged bank at date of merger	209,001,000

. . .

TRUSTCORP BANK, HUNTINGTON, NATIONAL ASSOCIATION,
Huntington, Indiana, and Exchange Bank, Warren, Indiana

Names of institutions and type of transaction	Total assets
Trustcorp Bank, Huntington, National Association, Huntington, Indiana (14398), with	$ 99,863,000
and Exchange Bank, Warren, Indiana, with	58,403,000
merged January 1, 1991, under charter of the former and title "First National Bank of Huntington." The merged bank at date of merger had	159,258,000

. . .

LINCOLN NATIONAL BANK AND TRUST COMPANY OF FORT WAYNE,
Fort Wayne, Indiana, and Community State Bank in Huntington, Huntington, Indiana

Names of institutions and type of transaction	*Total assets*
Lincoln National Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana (7725), with	$ 1,242,214,000
and Community State Bank, Huntington, Huntington, Indiana, with	93,009,000
merged March 31, 1991, under charter and title of the former. The merged bank at date of merger had	1,324,209,000

* * *

LINCOLN NATIONAL BANK AND TRUST COMPANY OF FORT WAYNE,
Fort Wayne, Indiana, and The City National Bank of Auburn, Auburn, Indiana

Names of institutions and type of transaction	*Total assets*
Lincoln National Bank and Trust Company of Fort Wayne, Fort Wayne, Indiana (7725), with	$ 1,324,209,000
and The City National Bank of Auburn, Auburn, Indiana (6509), with	68,303,000
merged March 31, 1991, under charter and title of the former. The merged bank at date of merger had	1,389,124,000

* * *

FIRST BANK, NATIONAL ASSOCIATION,
Davenport, Iowa, and Central Trust and Savings Bank, Eldridge, Iowa

Names of institutions and type of transaction	*Total assets*
First Bank, National Association, Davenport, Iowa (22198), with	$124,058,000
and Central Trust and Savings Bank, Eldridge, Iowa, with	42,409,000
merged January 14, 1991, under charter and title of the former. The merged bank at date of merger had	166,467,000

* * *

HERITAGE BANK, NATIONAL ASSOCIATION,
Holstein, Iowa, and The First Trust & Savings Bank, Alta, Iowa, and The First Trust & Savings Bank, Anthon, Iowa

Names of institutions and type of transaction	*Total assets*
Heritage Bank, National Association, Holstein, Iowa (18269), with	$ 76,733,000
and The First Trust & Savings Bank, Alta, Iowa, with	17,469,000
and The First Trust & Savings Bank, Anthon, Iowa, with	9,353,000
merged February 28, 1991, under charter 18269 and title "Heritage Bank, National Association." The merged bank at date of merger had	101,979, 000

* * *

THE COLUMBIAN NATIONAL BANK AND TRUST COMPANY,
Topeka, Kansas, and Topeka Bank and Trust Company, Topeka, Kansas

Names of institutions and type of transaction	*Total assets*
The Columbian National Bank and Trust Company, Topeka, Kansas (17800), with	$ 17,338,000
and Topeka Bank and Trust Company, Topeka, Kansas with	57,150,000
merged January 1, 1991, under charter and title of the former. The merged bank at date of merger had	74,485,000

* * *

BANK IV COFFEYVILLE, NATIONAL ASSOCIATION,
Coffeyville, Kansas, and Citadel Bank of Independence, Independence, Kansas

Names of institutions and type of transaction	*Total assets*
Bank IV Coffeyville, National Association, Coffeyville, Kansas (3324), with	$ 173,490,000
and Citadel Bank of Independence, Independence, Kansas, with	48,874,000
merged January 30, 1991, under charter and title of the former. The merged bank at date of merger had	218,654,000

* * *

COMPTROLLER'S DECISION

On September 13, 1990, application was made to the Office of the Comptroller of the Currency (OCC) for prior authorization to merge Citadel Bank of Independence, Independence, Kansas (Citadel Bank), into Bank IV Coffeyville, National Association, Coffeyville, Kansas (Bank IV). The application is based on an agreement entered into by the proponents on August 17, 1990, and amended as of September 12, 1990.

As of June 30, 1990, Citadel held total deposits of $44 million and operated from its sole Independence office. As of the same date, Bank IV held total deposits of $159 million and operated three branches. Citadel is controlled by Montgomery County Financial Corporation. Bank IV is wholly owned by Fourth Financial Corporation, a multibank holding company headquartered in Wichita, Kansas.

The relevant geographic market for this proposal is the area including and immediately surrounding Independence. This is the area where Citadel, the target bank, operates its sole office and derives the bulk of its deposits. Bank IV operates in an adjacent market to the south. While the primary service areas of the two banks are contiguous, Bank IV derives only a nominal amount of deposits from the target bank's service area. Therefore, consummation of the proposed transaction will merely result in one competitor replacing another in the relevant market, and it will not have an adverse effect on competition.

The Bank Merger Act requires the OCC to consider ". . . the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the communities to be served." Bank IV has the financial and managerial resources to consummate the merger without adversely affecting its overall condition. The future prospects for the resulting bank are favorable, as are the effects of the proposal on the convenience of the general public to be served.

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants' record of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory.

We have analyzed this proposal pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) and find that it will not significantly lessen competition in the relevant market. Other factors considered in evaluating this proposal are satisfactory. Accordingly, the application is approved.

December 20, 1990

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have a significantly adverse effect on competition.

* * *

FIRST NATIONAL BANK AND TRUST,
Salina, Kansas, and The Farmers National Bank of Victoria, Hays, Kansas

Names of institutions and type of transaction	*Total assets*
First National Bank and Trust, Salina, Kansas (4742), with	$ 252,060,000
and The Farmers National Bank of Victoria, Hays, Kansas (10749), with	34,795,000
merged February 13, 1991, under charter and title of the former. The merged bank at date of merger had	285,766,000

* * *

COMMERCIAL NATIONAL BANK OF KANSAS CITY,
Kansas City, Kansas, and First National Bank of Overland Park, Overland Park, Kansas

Names of institutions and type of transaction	*Total assets*
Commercial National Bank of Kansas City, Kansas City, Kansas (6311), with	$ 303,716,000
and First National Bank of Overland Park, Overland Park, Kansas (18315), with	29,641,000
merged February 28, 1991, under charter and title of the former. The merged bank at date of merger had	331,431,000

* * *

THE FIRST NATIONAL BANK OF WAVERLY,
Waverly, Kansas, and The Strawn State Bank, Burlington, Kansas

Names of institutions and type of transaction	*Total assets*
The First National Bank of Waverly, Waverly, Kansas (6101), with	$ 15,463,000
and The Strawn State Bank, Burlington, Kansas, with	13,445,000
merged March 4, 1991, under charter 6101 and title "First Bank, National Association." The merged bank at date of merger had	28,494,000

* * *

THE FIRST NATIONAL BANK IN GOODLAND,
Goodland, Kansas, and The Peoples State Bank, Sharon Springs, Kansas

Names of institutions and type of transaction	*Total assets*
The First National Bank in Goodland, Goodland, Kansas (14163), with	$ 67,735,000
and The Peoples State Bank, Sharon Springs, Kansas, with	13,726,000
merged March 4, 1991, under charter 14163 and title "First National Bank." The merged bank at date of merger had	86,474,000

* * *

THE CITIZENS NATIONAL BANK OF BOWLING GREEN,
Bowling Green, Kentucky, and Citizens Bank and Trust Company, Glasgow, Kentucky

Names of institutions and type of transaction	*Total assets*
The Citizens National Bank of Bowling Green, Bowling Green, Kentucky (5900), with	$ 234,767,000
and Citizens Bank and Trust Company, Glasgow, Kentucky, with	122,509,000
merged January 1, 1991, under charter 5900 and title "Trans Financial Bank, National Association." The merged bank at date of merger had	357,276,000

* * *

THE CENTRAL TRUST COMPANY OF KENTON COUNTY, NATIONAL ASSOCIATION,
Fort Wright, Kentucky, and The Central Trust Company, Boone County, Union, Kentucky

Names of institutions and type of transaction	*Total assets*
The Central Trust Company of Kenton County, National Association, Fort Wright, Kentucky (4260), with	$ 97,693,000
and The Central Trust Company, Boone County, Union, Kentucky, with	11,750,000
merged January 1, 1991, under charter 4260 and title "Central Trust, Northern Kentucky, National Association." The merged bank at date of merger had	106,493,000

* * *

THE FIRST NATIONAL BANK IN DONALDSONVILLE,
Donaldsonville, Louisiana, and Union Security Bank and Trust Company, Gonzales, Louisiana

Names of institutions and type of transaction	*Total assets*
The First National Bank in Donaldsonville, Donaldsonville, Louisiana (14281), with	$ 57,284,000
and Union Security Bank and Trust Company, Gonzales, Louisiana, with	26,343,000
merged March 22, 1991, under charter 14281 and title "Louisiana National Security Bank." The merged bank at date of merger had	83,775,000

* * *

NEW MAINE NATIONAL BANK, NATIONAL ASSOCIATION,
Portland, Maine, and Maine National Bank, Portland, Maine

Names of institutions and type of transaction	*Total assets*
New Maine National Bank, National Association, Portland, Maine (22175), with	—
and Maine National Bank, Portland, Maine (4128), with	—
merged January 6, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

NEW NATIONAL BANK OF NEW ENGLAND, NATIONAL ASSOCIATION,
Boston, Massachusetts, and Bank of New England, National Association, Boston, Massachusetts

Names of institutions and type of transaction	*Total assets*
New National Bank of New England, National Association, Boston, Massachusetts (22173), with	—
and Bank of New England, National Association, Boston, Massachusetts (475), with	—
merged January 6, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

BAYBANK BOSTON, N.A.,
Boston, Massachusetts, and Blackstone Bank and Trust Company, Boston, Massachusetts

Names of institutions and type of transaction	*Total assets*
BayBank Boston, N.A., Boston, Massachusetts (16757), with	$ 786,326,000
and Blackstone Bank and Trust Company, Boston, Massachusetts, with	—
merged March 15, 1991 under charter and title of the former. The merged bank at date of merger had	—

. . .

BANK MIDWEST, MINNESOTA IOWA, NATIONAL ASSOCIATION,
Jackson, Minnesota, and Bank Midwest, Minnesota Iowa, National Association, Fairmont, Minnesota

Names of institutions and type of transaction	*Total assets*
Bank Midwest, Minnesota Iowa, National Association, Jackson, Minnesota (13095), with	$ 48,660,000
and Bank Midwest, Minnesota Iowa, National Association, Fairmont, Minnesota (8551), with	35,833,000
merged January 1, 1991, under charter and title of the former. The merged bank at date of merger had	84,493,000

. . .

UNITED MISSOURI BANK OF KANSAS CITY, NATIONAL ASSOCIATION,
Kansas City, Missouri, and United Missouri Bank of Hickman Mills, Kansas City, Missouri, and United Missouri Bank South, Kansas City, Missouri, and United Missouri City Bank, Kansas City, Missouri

Names of institutions and type of transaction	*Total assets*
United Missouri Bank of Kansas City, National Association, Kansas City, Missouri (13936), with	$ 2,078,142,000
and United Missouri Bank of Hickman Mills, Kansas City, Missouri, with	102,594,000
and United Missouri Bank South, Kansas City, Missouri, with	118,444,000
and United Missouri City Bank, Kansas City, Missouri, with	297,858,000
merged March 29, 1991, under charter 13936 and title "United Missouri Bank, National Association." The merged bank at date of merger had	2,583,343,000

. . .

FIRST NATIONAL BANK OF TWIN BRIDGES,
Twin Bridges, Montana, and Bank of Sheridan, Sheridan, Montana

Names of institutions and type of transaction	*Total assets*
First National Bank of Twin Bridges, Twin Bridges, Montana (11008), with	$ 10,831,000
and Bank of Sheridan, Sheridan, Montana, with	10,812,000
merged January 1, 1991, under charter and title of the former. The merged bank at date of merger had	21,484,000

. . .

MIDLANTIC NATIONAL BANK,
Newark, New Jersey, and Midlantic National Bank/Delaware, Wilmington, Delaware

Names of institutions and type of transaction	*Total assets*
Midlantic National Bank, Newark, New Jersey (1316), with	$ 10,089,470,000
and Midlantic National Bank/Delaware, Wilmington, Delaware (21612), with	312,698,000
merged January 11, 1991, under charter and title of the former. The merged bank at date of merger had	10,402,168,000

. . .

UNITED JERSEY BANK/CENTRAL, N.A.,
West Windsor Township, New Jersey, and United Jersey Bank/Mid State, Hazlet, New Jersey, and United Jersey Bank/First Colonia, Colonia, New Jersey

Names of institutions and type of transaction	*Total assets*
United Jersey Bank/Central, N.A., West Windsor Township, New Jersey (4872), with	$ 2,437,213,000
and United Jersey Bank/Mid State, Hazlet, New Jersey, with	399,112,000
and United Jersey Bank/First Colonia, Colonia, New Jersey, with	130,740,000
merged February 8, 1991, under charter 4872 and title "United Jersey Bank/Central, N.A." The merged bank at date of merger had	2,967,065,000

. . .

BANCOHIO NATIONAL BANK,
Columbus, Ohio, and Buckeye National Bank, Columbus, Ohio

Names of institutions and type of transaction	Total assets
Bancohio National Bank, Columbus, Ohio (5065), with	$ 5,541,000,000
and Buckeye National Bank, Columbus, Ohio (22266), with	849,000,000
merged February 16, 1991, under charter and title of the former. The merged bank at date of merger had	6,400,000,000

* * *

MELLON BANK, NATIONAL ASSOCIATION,
Greensburg, Pennsylvania, and Mellon Bank (East), National Association, Bala Cynwyd, Pennsylvania

Names of institutions and type of transaction	Total assets
Mellon Bank, National Association, Greensburg, Pennsylvania (6301), with	$ 19,446,484,000
and Mellon Bank (East), National Association, Bala Cynwyd, Pennsylvania (20371), with	9,233,634,000
merged January 1, 1991, under charter and title of the former. The merged bank at date of merger had	30,588,232,000

* * *

NATIONAL BANK OF WESTERN PENNSYLVANIA, NATIONAL ASSOCIATION,
Berlin, Pennsylvania, and The Philson National Bank, Berlin, Pennsylvania

Names of institutions and type of transaction	Total assets
National Bank of Western Pennsylvania, National Association, Berlin, Pennsylvania (5307), with	$ 120,950,000
and The Philson National Bank, Berlin, Pennsylvania (6512), with	52,477,000
merged January 1, 1991, under charter 5307 and title "First Philson Bank, National Association." The merged bank at date of merger had	173,427,000

* * *

COMPTROLLER'S DECISION

On June 9, 1990, application was made to the Office of the Comptroller of the Currency (OCC), pursuant to the Bank Merger Act, 12 U.S.C. 1828(c), for prior authorization for the National Bank of Western Pennsylvania, Berlin, Pennsylvania (Western) to merge with The Philson National Bank, Berlin, Pennsylvania (Philson). The application is based on an aggreement finalized between Western and Philson on April 17, 1990.

As of March 31, 1990, Western held total deposits of $107 million and operated 10 banking offices located in Somerset and Fayette Counties, Pennsylvania. Western is a wholly owned subsidiary of N.B.W.P., Inc., a one bank holding company. As of the same date, Philson held total deposits of $47 million and operated two offices located in Somerset County, Pennsylvania.

The relevant geographic market for this proposal is the area consisting of the towns of Somerset and Berlin, Pennsylvania and the surrounding portions of primarily rural Somerset County. This is the area where Philson operates its two offices and derives the bulk of its deposits. Within this delineated market, 10 commercial banks and two savings and loan associations operate a total of 20 offices. Philson ranks fourth in the market with an 8 percent share of local deposits. Western is ranked second in the market with a share of 15 percent. Consummation of this proposal will result in Western remaining the second largest depository in the market with a market share of 23 percent. Although one competitor will be eliminated from the relevant market, 11 depositories will remain, including representation by several of the largest financial institutions in the state of Pennsylvania. Consequently, consummation of this proposal should not have a significantly adverse effect on competition in the relevant geographic market.

The Bank Merger Act requires the OCC to consider ". . . the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served." We find that the financial and managerial resources of both banks do not raise concerns that would cause the application to be disapproved. The future prospects of the resulting bank are considered satisfactory, as are the effects of the proposal on the convenience and needs of the community to be served

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicant's record of helping to meet the credit needs of its community, including low- and moderate-income neighborhoods, is less than satisfactory

We have analyzed this proposal pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) and find that it will not significantly lessen competition in the relevant market

Other factors considered in evaluating this proposal are satisfactory. Accordingly, the application is approved.

October 24, 1990.

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have a significantly adverse effect on competition.

* * *

NORWEST BANK SOUTH DAKOTA, NATIONAL ASSOCIATION, Sioux Falls, South Dakota, and Norwest National Bank of Yankton, Yankton, South Dakota

Names of institutions and type of transaction	*Total assets*
Norwest Bank South Dakota, National Association, Sioux Falls, South Dakota (10592), with	$ 2,142,243,000
and Norwest National Bank of Yankton, Yankton, South Dakota (22251), with	35,968,000
merged February 14, 1991, under charter and title of the former. The merged bank at date of merger had	2,178,211,000

* * *

FIRST TENNESSEE BANK, NATIONAL ASSOCIATION, Memphis, Tennessee, and Lebanon Bank, Lebanon, Tennessee

Names of institutions and type of transaction	*Total assets*
First Tennessee Bank, National Association, Memphis, Tennessee (336), with	$ 6,229,900,000
and Lebanon Bank, Lebanon, Tennessee, with	140,200,000
merged January 1, 1991, under charter and title of the former. The merged bank at date of merger had	6,361,591,000

* * *

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHATTANOOGA, Chattanooga, Tennessee, and Merchants Bank, Cleveland, Tennessee

Names of institutions and type of transaction	*Total assets*
American National Bank and Trust Company of Chattanooga, Chattanooga, Tennessee (14611), with	$ 1,147,195,000
and Merchants Bank, Cleveland, Tennessee, with	118,409,000
merged February 15, 1991 under charter and title of the former. The merged bank at date of merger had	1,257,323,000

* * *

EISENHOWER NATIONAL BANK, Fort Sam Houston, Texas, and Broadway Air Force National Bank, Randolph Air Force Base, Texas

Names of institutions and type of transaction	*Total assets*
Eisenhower National Bank, Fort Sam Houston, Texas (16144), with	$ 61,217,000
and Broadway Air Force National Bank, Randolph Air Force Base, Texas (17727), with	29,168,000
merged January 1, 1991, under charter and title of the former. The merged bank at date of merger had	90,477,000

* * *

OMNIBANC, NATIONAL ASSOCIATION, Houston, Texas, and Lockhart State Bank, Lockhart, Texas

Names of institutions and type of transaction	*Total assets*
Omnibanc, National Association, Houston, Texas (14703), with	$ 84,699,000
and Lockhart State Bank, Lockhart, Texas, with	—
merged February 7, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

FARMERS AND MERCHANTS NATIONAL BANK OF KAUFMAN, Kaufman, Texas, and First National Bank in Kaufman, National Association, Kaufman, Texas

Names of institutions and type of transaction	Total assets
Farmers and Merchants National Bank of Kaufman, Kaufman, Texas (10757), with	$ 54,986,000
and First National Bank in Kaufman, National Association, Kaufman, Texas (16484), with	—
merged February 7, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

TOMBALL NATIONAL BANK, Tomball, Texas, and Citadel Bank, Willis, Texas

Names of institutions and type of transaction	Total assets
Tomball National Bank, Tomball, Texas (18649), with	$ 51,922,000
and Citadel Bank, Willis, Texas, with	—
merged March 21, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

SOVRAN BANK, NATIONAL ASSOCIATION, Richmond, Virginia, and Sovran Bank/Delaware, Dover, Delaware

Names of institutions and type of transaction	Total assets
Sovran Bank, National Association, Richmond, Virginia (1111), with	$ 14,517,303,000
and Sovran Bank/Delaware, Dover, Delaware, with	130,728,000
merged January 7, 1991, under charter and title of the former. The merged bank at date of merger had	4,648,031,000

. . .

BANK 2000, NATIONAL ASSOCIATION, McLean, Virginia, and Bankstar, National Association, Reston, Virginia

Names of institutions and type of transaction	Total assets
Bank 2000, National Association, McLean, Virginia (20578), with	$ 42,705,000
and Bankstar, National Association, Reston, Virginia (21431), with	22,979,000
merged February 28, 1991, under charter 20578 and title "Suburban Bank of Virginia, National Association." The merged bank at date of merger had	65,684,000

. . .

DOMINION BANK, NATIONAL ASSOCIATION, Roanoke, Virginia, and Dominion Bank of Shenandoah Valley, National Association, Harrisonburg, Virginia

Names of institutions and type of transaction	Total assets
Dominion Bank, National Association, Roanoke, Virginia (2737), with	$ 6,421,275,000
and Dominion Bank of Shenandoah Valley, National Association, Harrisonburg, Virginia (5261), with	727,307,000
merged March 8, 1991, under charter and title of the former. The merged bank at date of merger had	7,071,460,000

. . .

DOMINION BANK, NATIONAL ASSOCIATION, Roanoke, Virginia, and Dominion Bank of Greater Hampton Roads, National Association, Norfolk, Virginia

Names of institutions and type of transaction	Total assets
Dominion Bank, National Association, Roanoke, Virginia (2737), with	$ 7,061,460,000
and Dominion Bank of Greater Hampton Roads, National Association, Norfolk, Virginia (15461), with	906,141,000
merged March 29, 1991, under charter and title of the former. The merged bank at date of merger had	7,892,299,000

. . .

THE FIRST CLARK NATIONAL BANK OF NORTHFORK,
Northfolk, West Virginia, and The Bank of War, War, West Virginia, and Ameribank, Welch, West Virginia, Welch, West Virginia

Names of institutions and type of transaction	Total assets
The First Clark National Bank of Northfork, Northfolk, West Virginia (8309), with	$ 34,579,000
and The Bank of War, War, West Virginia, with	27,538,000
and Ameribank, Welch, West Virginia, Welch, West Virginia, with	22,149,000
merged January 2, 1991, under charter 8309 and title "Americabank, National Association." The merged bank at date of merger had	84,253,000

* * *

ASSOCIATED BANK LAKESHORE, NATIONAL ASSOCIATION,
Manitowoc, Wisconsin, and Associated Sheboygan Bank, Sheboygan, Wisconsin

Names of institutions and type of transaction	Total assets
Associated Bank Lakeshore, National Association, Manitowoc, Wisconsin (15972), with	$ 230,503,000
and Associated Sheboygan Bank, Sheboygan, Wisconsin, with	35,149,000
merged January 1, 1991, under charter and title of the former. The merged bank at date of merger had	265,103,000

* * *

FIRST NATIONAL BANK OF STEVENS POINT,
Stevens Point, Wisconsin, and M&I Bank of Plover, Plover, Wisconsin

Names of institutions and type of transaction	Total assets
M&I First National Bank of Stevens Point, Stevens Point, Wisconsin (3001), with	$ 152,008,000
and M&I Bank of Plover, Plover, Wisconsin, with	31,543,000
merged January 1, 1991, under charter and title of the former. The merged bank at date of merger had	183,551,000

* * *

FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE,
Milwaukee, Wisconsin, and First Wisconsin Bank of Cedarburg, Cedarburg, Wisconsin

Names of institutions and type of transaction	Total assets
First Wisconsin National Bank of Milwaukee, Milwaukee, Wisconsin (64), with	$ 3,586,562,000
and First Wisconsin Bank of Cedarburg, Cedarburg, Wisconsin, with	92,261,000
merged March 1, 1991, under charter and title of the former. The merged bank at date of merger had	3,676,542,000

* * *

FOUNDERS NATIONAL BANK,
Los Angeles, California, and Founders Federal Savings & Loan Association, Los Angeles, California

Names of institutions and type of transaction	Total assets
Founders National Bank, Los Angeles, California (22394), with	—
and Founders Federal Savings & Loan Association, Los Angeles, California, with	—
merged January 18, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

REPUBLIC NATIONAL BANK OF MIAMI,
Miami, Florida, and General Federal Savings Bank, Miami, Florida

Names of institutions and type of transaction	Total assets
Republic National Bank of Miami, Miami, Florida (15555), with	$1,228,040,000
and General Federal Savings Bank, Miami, Florida, with	—
merged January 11, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

FLAGLER NATIONAL BANK,
West Palm Beach, Florida, and Statesman Federal Savings Bank, Des Moines, Iowa

Names of institutions and type of transaction	*Total assets*
Flagler National Bank, West Palm Beach, Florida (16409), with	$376,492,000
and Statesman Federal Savings Bank, Des Moines, Iowa, with	—
merged March 1, 1991, under charter and title of the former. The merged bank at date merger had	—

* * *

MOULTRIE NATIONAL BANK,
Moultrie, Georgia, and Moultrie Savings Bank, F.S.B., Moultrie, Georgia

Names of institutions and type of transaction	*Total assets*
Moultrie National Bank, Moultrie, Georgia (13161), with	$ 123,336,000
and Moultrie Savings Bank, F.S.B., Moultrie, Georgia, with	—
merged January 4, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

THE FIRST NATIONAL BANK OF CHICAGO,
Chicago, Illinois, and Horizon Savings Bank, F.S.B., Wilmette, Illinois

Names of institutions and type of transaction	*Total assets*
The First National Bank of Chicago, Chicago, Illinois (8), with	$35,994,272,000
and Horizon Savings Bank, F.S.B., Wilmette, Illinois, with	—
merged March 8, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST NATIONAL BANK, CEDAR RAPIDS, IOWA,
Cedar Rapids, Iowa, and American Federal Savings Association, Des Moines, Iowa

Names of institutions and type of transaction	*Total assets*
First National Bank, Cedar Rapids, Iowa, Cedar Rapids, Iowa (22405), with	—
and American Federal Savings Association, Des Moines, Iowa, with	—
merged February 8, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

BRENTON NATIONAL BANK OF PERRY,
Perry, Iowa, and American Federal Savings Association, Des Moines, Iowa

Names of institutions and type of transaction	*Total assets*
Brenton National Bank of Perry, Perry, Iowa (3026), with	$ 64,281,000
and American Federal Savings Association, Des Moines, Iowa, with	—
merged February 8, 1990, under charter and title of the former. The merged bank at date of merger had	—

* * *

THE FIRST NATIONAL BANK OF WEST UNION,
West Union, Iowa, and Statesman Federal Savings Bank, Des Moines, Iowa

Names of institutions and type of transaction	*Total assets*
The First National Bank of West Union, West Union, Iowa (13978), with	$ 58,595,000
and Statesman Federal Savings Bank, Des Moines, Iowa, with	—
merged March 1, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

THE FIRST NATIONAL BANK OF DUBUQUE, Dubuque, Iowa, and Statesman Federal Savings Bank, Des Moines, Iowa

Names of institutions and type of transaction	Total assets
The First National Bank of Dubuque, Dubuque, Iowa (317), with	$ 252,517,000
and Statesman Federal Savings Bank, Des Moines, Iowa, with	—
merged March 1, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

THE FIRST NATIONAL BANK OF SUMNER, Sumner, Iowa, and Statesman Federal Savings Bank, Des Moines, Iowa

Names of institutions and type of transaction	Total assets
The First National Bank of Sumner, Sumner, Iowa (8198), with	$ 33,448,000
and Statesman Federal Savings Bank, Des Moines, Iowa, with	—
merged March 1, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

THE HOME NATIONAL BANK OF ARKANSAS CITY, Arkansas City, Kansas, and Mid Kansas Savings and Loan Association, F.A., Wichita, Kansas

Names of institutions and type of transaction	Total assets
The Home National Bank of Arkansas City, Arkansas City, Kansas (4487), with	$ 138,315,000
and Mid Kansas Savings and Loan Association, F.A., Wichita, Kansas with	—
merged February 15, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

BANK IV WICHITA, NATIONAL ASSOCIATION, Wichita, Kansas, and Mid Kansas Savings and Loan Association, F.A., Wichita, Kansas

Names of institutions and type of transaction	Total assets
Bank IV Wichita, National Association, Wichita, Kansas (12490), with	$ 1,668,337,000
and Mid Kansas Savings and Loan Association, F.A., Wichita, Kansas, with	—
merged February 15, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

FIRST NATIONAL BANK IN WICHITA, Wichita, Kansas, and Mid Kansas Savings and Loan Association, F.A., Wichita, Kansas

Names of institutions and type of transaction	Total assets
First National Bank in Wichita, Wichita, Kansas (2782), with	$ 923,595,000
and Mid Kansas Savings and Loan Association, F.A., Wichita, Kansas, with	—
merged February 15, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

BANK IV GARDEN CITY, NATIONAL ASSOCIATION, Garden City, Kansas, and Mid Kansas Savings and Loan Association, F.A., Wichita, Kansas

Names of institutions and type of transaction	Total assets
Bank IV Garden City, National Association, Garden City, Kansas (13990), with	—
and Mid Kansas Savings and Loan Association, F.A., Wichita, Kansas, with	—
merged February 15, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

UNION NATIONAL BANK OF WICHITA,
Wichita, Kansas, and Mid Kansas Savings and Loan Association, Wichita, Kansas

Names of institutions and type of transaction	*Total assets*
Union National Bank of Wichita, Wichita, Kansas (11010), with	$ 564,664,000
and Mid Kansas Savings and Loan Association, Wichita, Kansas, with	—
merged February 15, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST FIDELITY BANK, NATIONAL ASSOCIATION, NEW JERSEY,
Newark, New Jersey, and City Savings, F.S.B., Somerset, New Jersey

Names of institutions and type of transaction	*Total assets*
First Fidelity Bank, National Association, New Jersey, Newark, New Jersey (1452), with	$ 11,615,529,000
and City Savings, F.S.B., Somerset, New Jersey, with	—
merged January 11, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

BANK AMERICA NEW MEXICO, N.A.,
Albuquerque, New Mexico and ABQ Federal Savings Bank, Albuquerque, New Mexico

Names of institutions and type of transaction	*Total assets*
Bank America New Mexico, N.A., Albuquerque, New Mexico (22409), with	—
and ABQ Federal Savings Bank, Albuquerque, New Mexico, with	—
merged March 1, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

PITTSBURGH NATIONAL BANK,
Pittsburgh, Pennsylvania, and First Federal Savings & Loan Association, Pittsburgh, Pennsylvania

Names of institutions and type of transaction	*Total assets*
Pittsburgh National Bank, Pittsburgh, Pennsylvania (252), with	$ 16,529,301,000
and First Federal Savings & Loan Association, Pittsburgh, Pennsylvania, with	—
merged January 4, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

THE SOUTH CAROLINA NATIONAL BANK,
Charleston, South Carolina, and Security Federal Savings, F.S.B., Columbia, South Carolina

Names of institutions and type of transaction	*Total assets*
The South Carolina National Bank, Charleston, South Carolina (2044), with	$ 6,921,017,000
and Security Federal Savings, F.S.B., Columbia, South Carolina, with	—
merged February 15, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

ZIONS FIRST NATIONAL BANK,
Salt Lake City, Utah, and Sandia Federal Savings Association, Albuquerque, New Mexico

Names of institutions and type of transaction	*Total assets*
Zions First National Bank, Salt Lake City, Utah (4341), with	$ 3,125,047,000
and Sandia Federal Savings Association, Albuquerque, New Mexico, with	—
merged March 1, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

Statistical Tables

NOTE. Tables produced by the Banking Research and Statistics Division.

Assets, liabilities and capital accounts of national banks, March 31, 1990, and March 31, 1991
(Dollar amounts in millions)

	March 31, 1990	March 31, 1991	[illegible] March 31, 1990– March 31, 1991 [illegible]	
	Consolidated foreign and domestic	Consolidated foreign and domestic	Amount	Amount
Assets				
Cash and balances due from depository institutions	$ 122,461	$ 100,430	$ 22,031	17.99
Noninterest-bearing balances and currency and coin	71,626	54,355	17,272	24.11
Interest-bearing balances	303,722	323,671	19,949	6.57
Securities				
Federal funds sold and securities purchased under agreements to resell	87,287	86,877	-410	-0.47
Loans and leases, net of unearned income	1,268,736	1,268,791	54	0.00
Less allowance for loan and lease losses	31,959	33,507	1,548	4.84
Less allocated transfer risk reserve	198	169	-29	-14.44
Net loans and leases	1,236,579	1,235,114	-1,465	0.12
Premises and fixed assets	28,779	30,040	1,261	4.38
Other real estate owned	9,140	16,412	7,273	79.57
All other assets	112,930	106,497	-6,432	-5.70
Total assets	1,972,524	1,953,396	-19,127	-0.97
Liabilities				
Deposits				
Noninterest-bearing deposits in domestic offices	257,368	249,537	-7,831	-3.04
Interest-bearing deposits in domestic offices	1,033,548	1,082,807	49,259	4.77
Total domestic deposits	1,290,916	1,332,344	41,427	3.21
Total foreign deposits	206,018	193,808	12,210	5.93
Total deposits	1,496,935	1,530,556	33,621	2.25
Federal funds purchased and securities sold under agreements to repurchase	182,644	146,586	-36,058	-19.74
Demand notes issued to the U.S. Treasury	9,609	13,278	3,670	38.19
Other borrowed money	82,862	62,607	20,255	24.44
Subordinated notes and debentures	11,686	15,173	3,487	29.84
All other liabilities	70,458	67,216	-3,242	4.60
Total Liabilities	1,854,193	1,835,416	18,777	-1.01
Limited-life preferred stock	77	1	76	99.22
Equity Capital				
Perpetual preferred stock	807	401	406	50.35
Common stock	16,504	17,137	632	[illegible]
Surplus	44,755	50,463	5,708	[illegible]
Net undivided profits and capital reserves	56,584	55,347	[illegible]	[illegible]
Cumulative foreign currency translation adjustments	(407)	530	[illegible]	[illegible]
Total equity capital	118,243	122,817	[illegible]	[illegible]
Total liabilities, limited-life preferred stock, and equity capital	1,972,524	1,953,396	[illegible]	[illegible]

Income and expenses of foreign and domestic offices and subsidiaries of national banks, March 31, 1991
(Dollar amounts in millions)

	Consolidated foreign and domestic	*Percent distribution*
Interest income		
Interest and fee income on loans	$33,473	75.3
Income from lease financing receivables	795	1.8
Interest income on balances due from depository institutions	1,275	2.9
Interest and dividend income on securities	6,867	15.4
Interest income from assets held in trading accounts	559	1.3
Interest income from federal funds sold and securities purchased under agreements to resell	1,478	3.3
Total interest income	44,447	100.0
Interest expense		
Interest on deposits	22,060	81.1
Expense of federal funds purchased and securities sold under agreements to repurchase	2,539	9.3
Interest on demand notes issued to the U.S. Treasury and on other borrowed money	2,210	8.1
Interest on mortgage indebtedness and obligations under capitalized leases	33	0.1
Interest on notes and debentures subordinated to deposits	368	1.4
Total interest expense	27,210	100.0
Net interest income	17,237	
Provision for loan and lease losses	4,535	
Provision for allocated transfer risk	−1	
Noninterest income		
Service charges on deposit accounts	1,941	21.8
Other noninterest income	5,049	56.7
Total noninterest income	8,898	100.0
Gains and losses on securities not held in trading accounts	290	
Noninterest expense		
Salaries and employee benefits	7,792	43.6
Expenses of premises and fixed assets (net of rental income)	2,663	14.9
Other noninterest expense	7,422	41.5
Total noninterest expense	17,877	100.0
Income (loss) before income taxes and extraordinary items and other adjustments	4,015	
Applicable income taxes	1,316	
Income before extraordinary items and other adjustments	2,699	
Extraordinary items and other adjustments, net of taxes	343	
Net Income	3,042	
Total cash dividends declared*	2,001	
Recoveries credited to allowance for possible loan losses	635	
Losses charged to allowance for possible loan losses	4,772	
Net loan losses	4,137	

*Banks with assets of less than $100 million report this item only in their December Report of Income

Loans of national banks, by states, March 31, 1991
(Dollar amounts in millions)

		Domestic offices					
	Total loans, gross	Loans secured by real estate	Loans to farmers	Commercial and industrial loans	Personal loans to individuals	Other loans	Total loans at foreign offices
All national banks	$1,276,225	$480,828	$14,152	$314,853	$108,684	$217,859	$139,849
Alabama	10,639	4,381	56	3,213	742	2,247	0
Alaska	1,367	539	2	512	38	269	6
Arizona	10,008	3,357	370	2,234	3,500	547	0
Arkansas	6,074	2,933	184	1,360	1,157	441	0
California	185,490	86,989	1,938	33,417	3,217	29,422	30,507
Colorado	10,496	4,160	433	2,273	2,577	1,053	0
Connecticut	11,893	7,146	24	3,162	101	1,461	0
Delaware	16,541	562	1	155	9,212	3,370	3,242
District of Columbia	10,235	4,894	0	2,900	61	1,656	724
Florida	64,119	36,763	129	10,104	6,335	10,662	125
Georgia	25,645	9,987	79	7,359	2,347	5,449	424
Hawaii	199	124	0	61	12	3	0
Idaho	4,781	1,310	418	1,196	1,407	449	0
Illinois	66,356	19,585	786	25,889	6,081	7,936	6,079
Indiana	21,266	8,427	281	5,313	3,910	3,334	0
Iowa	6,247	2,314	609	1,501	1,450	373	0
Kansas	6,994	2,683	865	1,611	1,464	372	0
Kentucky	10,232	3,651	121	2,916	1,283	2,258	3
Louisiana	12,354	5,162	50	3,613	1,297	1,910	322
Maine	2,606	1,727	6	492	309	73	0
Maryland	18,999	8,226	17	3,740	3,876	2,873	268
Massachusetts	35,651	12,806	30	12,937	192	5,508	4,178
Michigan	34,163	12,339	141	11,938	2,170	6,212	1,362
Minnesota	22,779	7,233	467	8,286	1,515	5,096	182
Mississippi	5,435	2,240	75	1,332	746	1,042	0
Missouri	18,116	7,908	289	4,985	1,947	2,987	0
Montana	1,890	621	196	475	538	59	0
Nebraska	6,757	1,728	1,191	1,225	2,215	398	0
Nevada	8,253	1,553	11	580	5,840	269	0
New Hampshire	1,531	920	0	355	230	26	0
New Jersey	45,373	23,272	20	12,139	2,908	6,846	189
New Mexico	3,962	2,004	115	712	802	328	0
New York	224,848	59,235	331	39,424	4,798	32,349	88,711
North Carolina	37,956	15,411	140	12,323	387	9,022	673
North Dakota	1,498	563	196	369	311	59	0
Ohio	57,687	19,922	294	15,860	6,389	15,159	63
Oklahoma	6,902	2,763	607	1,781	849	903	0
Oregon	12,352	3,828	257	4,163	162	3,942	0
Pennsylvania	70,300	24,715	107	22,867	4,621	16,346	1,644
Rhode Island	8,413	3,060	0	2,861	7	2,456	29
South Carolina	13,972	6,744	55	2,975	1,762	2,437	0
South Dakota	11,285	702	336	1,492	8,611	145	0
Tennessee	14,939	5,908	73	3,968	945	4,046	0
Texas	58,124	19,422	1,428	20,849	5,073	10,390	962
Utah	4,677	1,755	99	1,066	142	1,615	0
Vermont	1,780	1,133	22	392	209	24	0
Virginia	19,830	8,779	119	4,640	775	5,517	0
Washington	25,654	10,835	872	6,577	672	6,557	142
West Virginia	5,734	2,874	11	1,082	1,591	177	0
Wisconson	12,973	5,358	213	3,950	1,665	1,776	1[illegible]
Wyoming	809	263	89	215	225	17	0
Puerto Rico	39	13	0	11	13	3	0

*Zeros indicate amounts of less than $500,000

Deposits of national banks, by states, March 31, 1991
(Dollar amounts in millions)

	Domestic offices						
	Total demand deposits	*All NOW accounts*	*Money market deposit accounts*	*Large time deposits*	*All other deposits at domestic offices*	*Total deposits at foreign offices*	*Total consolidated deposits*
All national banks	$242,177	$123,786	$242,117	$206,004	$522,664	$193,808	$1,530,556
Alabama	2,157	1,288	2,918	1,908	5,587	173	14,031
Alaska	684	175	336	361	889	0	2,445
Arizona	2,728	1,628	3,714	1,252	5,832	0	15,154
Arkansas	1,522	1,470	1,088	1,392	4,743	0	10,215
California	33,888	14,947	35,401	24,104	48,809	29,366	186,515
Colorado	3,798	2,375	3,682	1,588	5,012	107	16,563
Connecticut	3,966	1,322	2,123	1,766	7,812	163	17,152
Delaware	297	81	1,402	4,274	5,381	0	11,436
District of Columbia	2,425	1,277	2,796	3,317	2,837	1,585	14,237
Florida	13,780	8,107	15,038	13,147	32,927	426	83,425
Georgia	6,218	2,660	5,791	4,066	10,341	291	29,369
Hawaii	56	34	26	53	87	0	255
Idaho	969	654	933	471	2,434	0	5,460
Illinois	13,369	5,446	9,494	17,481	25,223	18,323	89,337
Indiana	4,101	2,651	4,315	2,903	11,240	99	25,309
Iowa	1,722	1,229	1,180	789	5,058	0	9,979
Kansas	1,603	1,456	1,879	1,421	5,844	0	12,204
Kentucky	2,208	1,644	1,262	1,578	5,859	263	12,813
Louisiana	3,526	1,764	3,129	3,706	6,897	134	19,156
Maine	367	296	459	202	1,669	0	2,994
Maryland	3,306	1,276	2,780	4,487	8,785	635	21,269
Massachusetts	5,638	2,298	7,945	5,865	11,443	5,223	38,411
Michigan	7,163	2,647	7,520	5,507	18,063	2,788	43,689
Minnesota	4,941	3,020	5,615	3,091	11,169	554	28,390
Mississippi	1,284	1,020	1,147	1,333	3,889	0	8,673
Missouri	4,677	2,982	4,449	2,208	11,458	69	25,845
Montana	479	456	653	198	1,469	0	3,255
Nebraska	1,462	1,321	1,235	657	5,164	0	9,839
Nevada	1,037	517	1,225	1,020	1,209	0	5,008
New Hampshire	333	301	168	220	999	0	2,021
New Jersey	10,420	5,239	8,319	5,189	29,205	44	58,415
New Mexico	876	909	895	904	3,112	0	6,696
New York	26,069	8,283	30,257	22,422	37,488	121,192	245,710
North Carolina	6,159	1,854	5,358	8,317	12,230	3,756	37,673
North Dakota	296	452	403	232	1,446	0	2,829
Ohio	9,974	6,116	9,749	8,080	31,568	1,492	66,979
Oklahoma	2,531	1,732	1,677	1,658	5,523	83	13,204
Oregon	2,254	1,682	2,651	1,343	4,810	2	12,742
Pennsylvania	13,526	5,872	12,751	12,401	36,970	4,647	86,168
Rhode Island	920	436	1,475	3,295	2,502	413	9,041
South Carolina	2,365	1,995	3,043	1,633	5,702	0	14,738
South Dakota	463	472	1,324	1,707	3,368	0	7,334
Tennessee	3,409	1,978	4,176	1,937	8,794	37	20,330
Texas	18,877	11,572	18,055	17,074	34,038	1,565	101,181
Utah	1,038	749	985	435	2,671	59	5,937
Vermont	196	202	375	269	1,039	0	2,080
Virginia	3,386	2,468	2,213	3,992	10,549	31	22,639
Washington	5,626	2,807	5,550	2,366	9,842	256	26,447
West Virginia	1,056	948	699	675	5,365	0	8,743
Wisconsin	2,751	1,375	2,179	1,432	7,517	33	15,287
Wyoming	273	306	279	265	752	0	1,874
Puerto Rico	6	*	0	14	41	0	61

* [illegible] less than $500,000

Interest income of national banks, March 31, 1991
(Dollar amounts in millions)

	Interest and fees on loans	Income from lease financing	Interest due from other depository institutions	Interest and dividends on securities	Interest from trading account assets	Interest from federal funds transactions	Total interest income
All national banks	$33,473	$795	$1,275	$6,867	$559	$1,478	$44 447
Alabama	273	1	1	100	4	5	384
Alaska	38	0	1	31	0	1	72
Arizona	265	7	6	67	3	22	371
Arkansas	158	0	2	74	2	11	247
California	4,797	91	116	241	88	83	5,416
Colorado	290	3	15	94	0	29	433
Connecticut	267	0	1	81	0	12	361
Delaware	508	2	0	5	0	11	527
District of Columbia	245	3	23	63	0	20	354
Florida	1,620	9	23	412	1	89	2,153
Georgia	681	10	8	165	2	27	893
Hawaii	5	0	0	1	0	0	6
Idaho	123	3	2	28	2	3	160
Illinois	1,634	5	209	379	69	111	2,407
Indiana	541	12	6	137	0	22	718
Iowa	163	0	1	84	0	9	257
Kansas	190	2	2	99	0	17	309
Kentucky	255	5	4	70	0	18	352
Louisiana	325	1	10	137	0	18	491
Maine	66	0	0	9	0	2	78
Maryland	514	6	9	106	7	28	670
Massachusetts	968	64	58	162	6	45	1,303
Michigan	842	8	42	271	3	27	1,194
Minnesota	561	15	6	161	2	37	781
Mississippi	139	0	2	69	0	11	221
Missouri	446	3	5	158	25	35	673
Montana	51	0	1	20	0	12	84
Nebraska	191	2	1	65	0	11	271
Nevada	326	0	0	23	0	1	350
New Hampshire	43	0	1	9	0	2	55
New Jersey	1,102	10	24	234	1	53	1,424
New Mexico	102	1	1	40	0	13	156
New York	6,540	315	493	714	270	152	8,484
North Carolina	872	24	32	223	30	46	1,227
North Dakota	40	0	1	22	0	7	70
Ohio	1,564	42	21	351	8	55	2,041
Oklahoma	183	0	4	108	0	17	314
Oregon	304	20	0	44	4	8	381
Pennsylvania	1,635	54	57	504	9	54	2,312
Rhode Island	158	40	1	30	0	37	266
South Carolina	357	2	2	82	2	12	456
South Dakota	392	1	1	22	0	2	418
Tennessee	380	6	12	119	5	18	540
Texas	1,455	7	47	690	6	245	2 451
Utah	120	4	5	32	5	3	168
Vermont	50	0	0	6	0	1	58
Virginia	519	2	10	107	1	12	652
Washington	665	7	3	43	2	9	728
West Virginia	152	0	2	73	0	8	235
Wisconson	336	6	2	79	0	8	432
Wyoming	20	0	0	19	0	2	42
Puerto Rico	1	0	0	0	0	0	2

*Zeros indicate amounts of less than $500,000

Noninterest income of national banks, March 31, 1991
(Dollar amounts in millions)

	Service charges on deposit accounts	Gains (Losses) on foreign exchange transactions	Gains (Losses) on fees from assets in trading accounts	Other noninterest income + extraordinary items	Gains (Losses) on assets not in trading accounts	Total noninterest income and gains (losses) on assets not in trading accounts
All national banks	$1,941	$460	$265	$6,575	$290	$9,531
Alabama	20	1	3	39	1	64
Alaska	4	0	0	8	1	13
Arizona	32	1	1	83	20	137
Arkansas	13	0	2	24	0	39
California	317	85	56	700	7	1,165
Colorado	33	1	3	79	3	120
Connecticut	27	1	0	126	5	159
Delaware	12	0	0	612	-1	624
District of Columbia	15	3	1	46	3	67
Florida	135	3	2	232	25	397
Georgia	64	1	3	90	6	164
Hawaii	0	0	0	0	0	1
Idaho	9	0	0	12	0	22
Illinois	77	41	27	249	9	401
Indiana	30	0	1	73	1	105
Iowa	11	0	0	41	2	54
Kansas	14	0	0	24	1	38
Kentucky	14	0	0	28	1	42
Louisiana	29	0	0	45	5	80
Maine	3	0	0	8	1	12
Maryland	35	1	3	69	-2	100
Massachusetts	38	2	11	287	6	344
Michigan	51	4	4	119	1	179
Minnesota	37	3	4	98	2	144
Mississippi	12	0	0	15	0	27
Missouri	34	1	8	73	0	116
Montana	4	0	0	7	1	11
Nebraska	10	0	0	56	1	68
Nevada	9	0	0	144	0	153
New Hampshire	2	0	0	4	0	7
New Jersey	66	1	2	111	18	198
New Mexico	8	0	0	14	0	23
New York	142	284	91	1,085	21	1,624
North Carolina	54	10	7	114	45	231
North Dakota	3	0	0	5	2	10
Ohio	75	3	1	263	12	354
Oklahoma	20	0	3	40	1	64
Oregon	32	0	3	52	6	93
Pennsylvania	90	7	3	295	24	419
Rhode Island	5	1	0	48	5	58
South Carolina	24	0	1	69	1	95
South Dakota	3	0	0	416	1	420
Tennessee	33	0	19	48	1	101
Texas	173	3	7	376	50	608
Utah	11	0	1	19	1	31
Vermont	2	0	0	3	0	5
Virginia	25	0	1	64	1	91
Washington	56	3	2	89	3	153
West Virginia	6	0	0	12	0	18
[illegible]	20	0	0	57	0	78
[illegible]	[illegible]	0	0	3	0	[illegible]
[illegible]	0	0	0	0	0	1

[illegible] less than $500,000

Interest expense of national banks, March 31, 1991
(Dollar amounts in millions)

	Interest on deposits	Expense of federal funds transactions	Interest on treasury demand notes and borrowed money	Interest on mortgage and capitalized leases	Interest on subordinated notes and debentures	Total interest expense
All national banks	$22,060	$2,539	$2,210	$33	$368	$27,210
Alabama	194	29	1	0	0	224
Alaska	27	6	0	0	0	33
Arizona	182	4	10	0	0	196
Arkansas	133	4	1	0	0	138
California	2,464	213	276	5	78	3,035
Colorado	197	24	1	1	1	223
Connecticut	229	19	14	0	0	261
Delaware	132	33	100	0	6	271
District of Columbia	216	21	4	0	2	242
Florida	1,071	136	19	1	8	1,235
Georgia	384	91	10	0	3	488
Hawaii	3	0	0	0	0	3
Idaho	72	14	3	0	0	89
Illinois	1,321	168	107	0	17	1,613
Indiana	346	50	11	0	0	408
Iowa	130	16	1	0	0	148
Kansas	170	9	1	0	0	180
Kentucky	177	26	5	0	0	208
Louisiana	250	30	1	0	0	281
Maine	45	2	2	0	0	49
Maryland	321	39	48	0	4	413
Massachusetts	787	83	91	1	7	968
Michigan	611	59	39	0	2	711
Minnesota	381	52	12	1	8	453
Mississippi	119	12	0	0	0	132
Missouri	343	51	12	2	0	408
Montana	43	3	0	0	0	47
Nebraska	138	8	0	1	0	147
Nevada	64	18	39	0	0	121
New Hampshire	28	3	1	0	0	32
New Jersey	780	42	14	0	6	843
New Mexico	86	7	1	0	0	93
New York	4,521	293	1,043	9	167	6,033
North Carolina	514	224	58	1	6	805
North Dakota	41	1	0	0	0	42
Ohio	908	146	38	1	6	1,099
Oklahoma	166	6	4	0	0	177
Oregon	152	24	16	0	0	192
Pennsylvania	1,194	135	77	1	23	1,430
Rhode Island	134	30	10	0	2	177
South Carolina	193	66	4	0	1	264
South Dakota	124	17	49	0	1	191
Tennessee	270	33	4	0	2	310
Texas	1,308	151	56	2	8	1,526
Utah	74	13	5	0	0	93
Vermont	33	1	0	0	0	34
Virginia	329	51	11	0	1	391
Washington	312	38	9	2	7	366
West Virginia	119	10	1	0	0	129
Wisconson	202	28	3	0	1	234
Wyoming	22	0	0	0	0	23
Puerto Rico	1	0	0	0	0	1

*Zeros indicate amounts of less than $500,000

Noninterest and other expense of national banks, March 31, 1991
(Dollar amounts in millions)

	Provision for loan and lease losses	Provision for allocated transfer risk	Salaries and employee benefits	Expenses of premises and fixed assets	Applicable income taxes	Other noninterest expense	Total noninterest and other expense
All national banks	$4,535	$-1	$7,792	$2,663	$1,450	$7,422	$23,861
Alabama	21	0	66	20	15	54	177
Alaska	1	0	17	6	6	9	38
Arizona	30	0	105	31	9	92	268
Arkansas	6	0	45	13	12	39	115
California	414	-2	984	394	374	821	2,986
Colorado	38	0	94	33	9	125	299
Connecticut	120	0	84	35	1	86	325
Delaware	139	0	77	21	181	200	618
District of Columbia	89	0	56	23	-25	105	248
Florida	397	-1	367	156	15	428	1,362
Georgia	72	0	159	48	31	179	489
Hawaii	0	0	2	1	0	1	4
Idaho	5	0	22	5	11	30	72
Illinois	143	0	394	127	58	276	996
Indiana	47	0	116	35	34	103	336
Iowa	9	0	45	15	15	47	131
Kansas	15	0	47	12	12	50	136
Kentucky	22	0	56	18	9	44	149
Louisiana	79	0	87	27	7	93	292
Maine	6	0	14	5	1	17	43
Maryland	151	2	120	35	-37	135	406
Massachusetts	178	0	245	98	4	228	753
Michigan	58	0	216	63	36	172	545
Minnesota	53	0	107	35	24	173	392
Mississippi	17	0	36	11	5	30	99
Missouri	28	0	117	35	29	101	311
Montana	1	0	14	4	5	16	40
Nebraska	15	0	47	16	16	61	155
Nevada	91	0	30	12	31	127	291
New Hampshire	10	0	10	3	0	12	35
New Jersey	220	0	251	93	12	233	809
New Mexico	13	0	30	10	2	26	82
New York	912	0	1,561	536	116	995	4,119
North Carolina	105	0	169	52	42	161	529
North Dakota	1	0	12	3	3	10	29
Ohio	222	0	310	88	65	370	1,053
Oklahoma	8	0	67	18	11	64	168
Oregon	41	0	82	17	26	56	223
Pennsylvania	175	0	348	133	48	372	1,076
Rhode Island	36	0	42	8	5	45	136
South Carolina	52	0	72	25	22	59	231
South Dakota	106	0	47	13	75	261	501
Tennessee	49	0	107	29	14	89	289
Texas	127	0	493	172	41	451	1,284
Utah	12	0	25	7	9	35	89
Vermont	8	0	10	3	0	8	29
Virginia	116	0	106	35	-7	97	347
Washington	40	0	159	50	45	125	419
West Virginia	6	0	36	10	11	31	94
Wisconsin	28	0	78	22	21	75	224
Wyoming	[illegible]	0	7	2	2	7	19
Puerto Rico	[illegible]	0	0	0	0	0	1

[illegible] less than $500,000.

Book value of securities at national banks, March 31, 1991
(Dollar amounts in millions)

	U.S. treasury securities	U.S. government issued or guaranteed certificates of participation	Other U.S. government agency and corporation obligations	Securities issued by states and political subdivisions in the U.S.	Other domestic debt securities	Foreign debt securities	Equity securities
All national banks	$76,773	$94,706	$66,464	$39,753	$25,588	$13,215	$4,300
Alabama	488	1,293	1,619	983	277	14	35
Alaska	852	4	278	126	271	0	6
Arizona	1,145	134	1,364	340	251	1	21
Arkansas	1,340	590	1,013	488	240	1	34
California	2,152	5,987	629	1,003	334	1,301	321
Colorado	1,560	281	1,595	542	188	0	36
Connecticut	329	2,441	291	76	367	8	26
Delaware	812	13	62	7	331	0	36
District of Columbia	976	634	625	211	273	90	19
Florida	5,620	6,082	4,202	2,550	1,442	165	188
Georgia	752	3,470	1,197	1,364	862	7	63
Hawaii	6	0	37	2	0	0	0
Idaho	297	227	448	223	208	0	8
Illinois	4,581	3,151	3,711	3,316	1,883	361	366
Indiana	1,457	1,307	1,681	1,117	914	7	95
Iowa	940	1,590	631	359	233	0	22
Kansas	1,065	1,254	1,684	689	153	0	40
Kentucky	825	513	865	846	232	1	38
Louisiana	2,181	2,817	893	341	311	3	34
Maine	230	117	163	29	21	0	3
Maryland	963	1,656	1,134	585	671	99	38
Massachusetts	2,646	3,213	1,033	114	225	564	178
Michigan	1,283	5,694	1,494	2,119	1,351	43	89
Minnesota	1,415	3,959	693	768	795	6	85
Mississippi	661	798	1,011	514	253	1	24
Missouri	3,910	1,395	1,038	925	249	39	33
Montana	204	348	180	55	55	0	8
Nebraska	1,110	589	692	383	199	2	14
Nevada	101	423	88	54	383	0	9
New Hampshire	148	35	162	47	53	0	5
New Jersey	2,822	2,433	2,696	1,674	1,227	52	82
New Mexico	796	352	481	300	33	5	16
New York	5,580	6,548	1,465	3,582	2,348	9,752	1,155
North Carolina	3,502	3,857	594	1,502	407	200	43
North Dakota	198	482	157	87	34	0	11
Ohio	2,909	3,021	5,769	3,199	1,336	27	136
Oklahoma	2,389	1,327	834	471	183	1	40
Oregon	383	823	306	414	173	1	11
Pennsylvania	2,982	7,544	7,378	2,608	2,423	358	171
Rhode Island	197	968	54	91	92	2	15
South Carolina	739	986	1,193	605	256	12	24
South Dakota	130	634	55	92	36	0	19
Tennessee	1,375	1,381	1,512	795	400	2	30
Texas	9,150	10,519	8,917	1,096	2,040	77	324
Utah	267	248	606	95	128	0	97
Vermont	131	35	54	46	48	0	9
Virginia	472	1,771	1,139	738	639	1	22
Washington	586	482	343	375	213	2	56
West Virginia	759	466	1,489	636	80	0	95
Wisconson	993	550	683	1,122	418	6	53
Wyoming	370	259	223	49	49	0	4
Puerto Rico	0	4	0	1	3	0	0

*Zeros indicate amounts of less than $500,000

Off-balance sheet items at national banks, March 31, 1991
(Dollar amounts in millions)

	Unused commitments	Letters of credit	Participations in acceptances acquired by the reporting bank	Securities borrowed	Securities lent	Mortgages transferred with recourse treated as sold	Interest rate contracts and when-issued securities
All national banks	$739 825	$140,964	$192	$2 436	$7,970	$11,621	$1,803 216
Alabama	3 221	701	0	16	4	171	583
Alaska	467	20	0	16	70	0	25
Arizona	10 296	298	0	0	0	0	2,861
Arkansas	885	76	0	0	0	124	100
California	111,989	24,456	2	81	79	217	358,853
Colorado	6,617	328	1	0	0	0	108
Connecticut	3,694	1 222	0	0	0	39	2,535
Delaware	91 909	9	0	0	100	0	3,383
District of Columbia	3 348	731	0	13	14	1	4,049
Florida	18,757	3,087	0	0	121	586	2,075
Georgia	14,007	1,981	21	91	5	77	7,298
Hawaii	73	2	0	0	0	0	0
Idaho	1,845	134	0	0	1	0	516
Illinois	56,848	11,259	26	13	26	8	290,833
Indiana	8,258	926	1	98	885	1	1,323
Iowa	5,638	190	0	0	34	0	483
Kansas	2,358	125	0	6	0	29	26
Kentucky	2,736	404	0	21	46	2	434
Louisiana	3,385	512	1	0	0	116	249
Maine	525	31	0	0	0	0	99
Maryland	11,284	1,209	0	54	127	147	10,872
Massachusetts	17,983	3,725	3	39	41	1,680	46,205
Michigan	13,335	2,063	2	0	34	382	6,325
Minnesota	9,442	3,184	8	0	59	86	8,532
Mississippi	1,490	121	0	0	0	7	107
Missouri	6,528	1,138	5	176	87	0	1,486
Montana	535	74	0	2	0	1	185
Nebraska	6,261	197	3	0	0	0	133
Nevada	1,186	90	0	0	0	1	4,521
New Hampshire	360	23	0	0	0	0	70
New Jersey	12,283	1,529	5	22	0	0	4,797
New Mexico	1 005	42	1	0	10	47	0
New York	95,782	54,083	38	586	789	6,416	920,269
North Carolina	18,005	3,226	4	0	0	196	17,374
North Dakota	212	18	0	2	0	0	90
Ohio	34,806	4,094	17	0	0	342	20,610
Oklahoma	1.658	160	0	0	0	20	97
Oregon	8.371	503	4	0	0	0	3,721
Pennsylvania	28,190	9,446	26	0	1,238	210	36,550
Rhode Island	4 408	412	5	0	0	0	1.632
South Carolina	4.412	303	0	31	463	12	485
South Dakota	51.269	43	0	0	1	0	3,987
Tennessee	5 518	745	0	0	245	15	2,060
Texas	24 799	3,944	7	1,122	3,254	3	9,774
Utah	1 951	252	0	0	0	0	1,011
Vermont	334	32	0	0	0	5	60
Virginia	9,621	1 349	1	37	104	629	2,560
Washington	14 678	1,658	7	10	72	0	21,850
West Virginia	876	75	0	0	60	0	1
Wisconsin	6 273	713	1	0	0	52	2 020
Wyoming	113	19	0	0	0	0	0
Puerto Rico	*	0	0	0	0	0	0

* Dollar amounts less than $500,000

Outstanding balances, credit cards and related plans of national banks, March 31, 1991
(Dollar amounts in thousands)

	Total number of national banks	Credit cards and other related credit plans	
		Number of national banks	*Outstanding Volume*
All national banks	3,950	2,345	$77,637,594
Alabama	52	28	345,773
Alaska	4	3	47,949
Arizona	12	12	935,087
Arkansas	82	22	122,287
California	158	145	12,851,277
Colorado	253	226	1,123,471
Connecticut	17	10	90,442
Delaware	14	14	14,914,288
District of Columbia	23	20	138,110
Florida	167	87	1,870,585
Georgia	73	52	2,052,032
Hawaii	3	1	3,357
Idaho	7	7	202,116
Illinois	341	191	809,511
Indiana	84	76	893,921
Iowa	99	55	417,004
Kansas	161	48	335,962
Kentucky	84	38	210,058
Louisiana	47	19	468,591
Maine	7	7	54,145
Maryland	28	22	3,720,561
Massachusetts	31	22	177,644
Michigan	65	50	529,244
Minnesota	154	111	754,776
Mississippi	26	11	117,190
Missouri	91	57	411,529
Montana	45	29	23,315
Nebraska	110	51	1,299,223
Nevada	7	4	5,350,943
New Hampshire	11	7	73,078
New Jersey	56	47	1,003,162
New Mexico	40	15	178,535
New York	93	65	4,656,384
North Carolina	15	15	550,396
North Dakota	30	23	33,150
Ohio	134	109	4,574,646
Oklahoma	167	64	63,882
Oregon	8	6	1,101,653
Pennsylvania	155	95	812,855
Rhode Island	3	2	141,618
South Carolina	31	27	641,998
South Dakota	21	13	7,510,005
Tennessee	43	25	650,292
Texas	598	214	959,997
Utah	6	4	204,551
Vermont	12	5	43,338
Virginia	46	23	1,639,339
Washington	27	19	1,738,546
West Virginia	78	30	93,013
Wisconson	98	89	685,853
Wyoming	32	29	11,556
Puerto Rico	1	1	350

Consolidated foreign and domestic loans and leases past due at national banks, by states, March 31, 1991
(Dollar amounts in millions)

	Number of banks	All real estate	Type of loan: Commercial and industrial[1]	Personal[2]	Leases	Other loans[3]	Total loans	To non U.S. addresses
All national banks	3,950	$17,817.6	$7,332.0	$8,930.7	$463.2	$1,106.0	$35,649.5	$840.83
Alabama	52	103.1	52.7	68.2	0.4	3.5	227.9	0.00
Alaska	4	20.8	28.5	3.8	1.3	4.6	59.0	0.00
Arizona	12	123.9	64.2	51.9	1.3	10.2	251.4	2.00
Arkansas	82	74.4	44.9	26.9	0.2	6.2	152.6	0.00
California	158	3,085.6	1,135.2	861.8	44.9	130.7	5,258.2	81.85
Colorado	253	104.9	98.2	55.3	3.2	2.9	264.4	0.00
Connecticut	17	380.1	116.9	59.6	0.2	22.0	578.8	0.00
Delaware	14	14.9	15.7	522.8	1.4	123.2	678.0	0.00
District of Columbia	23	434.1	303.3	33.3	0.3	28.3	799.3	21.22
Florida	167	1,185.3	259.7	278.5	5.9	21.5	1,751.0	1.95
Georgia	73	243.9	155.6	202.1	14.4	23.4	639.4	0.00
Hawaii	3	0.5	0.5	0.3	0.0	0.0	1.3	0.00
Idaho	7	14.7	10.7	22.4	0.3	9.1	57.3	0.00
Illinois	341	564.6	417.0	184.2	2.3	60.9	1,228.9	3.64
Indiana	84	216.7	107.1	172.4	4.0	6.5	506.7	0.00
Iowa	99	28.4	37.7	56.5	0.9	3.3	126.8	0.00
Kansas	161	53.6	50.8	29.6	1.0	0.4	135.4	0.00
Kentucky	84	95.2	70.8	51.8	1.8	4.4	224.0	0.00
Louisiana	47	115.3	82.6	85.9	1.3	11.8	296.9	0.00
Maine	7	70.7	13.5	14.1	0.0	0.0	98.3	0.00
Maryland	28	310.7	100.3	328.9	6.9	16.2	763.0	5.10
Massachusetts	31	722.7	286.0	102.3	23.8	28.4	1,163.2	9.55
Michigan	65	315.5	163.3	129.8	6.4	24.8	639.8	5.51
Minnesota	154	197.1	226.8	103.1	11.3	54.4	592.7	0.00
Mississippi	26	52.7	25.4	31.6	0.0	7.5	117.2	0.00
Missouri	91	185.5	104.1	63.8	1.3	6.8	361.5	0.00
Montana	45	20.9	17.9	9.2	0.0	2.7	50.6	0.00
Nebraska	110	35.6	45.7	58.4	0.1	2.0	141.7	0.00
Nevada	7	18.5	13.2	658.7	0.0	0.0	690.3	0.00
New Hampshire	11	58.2	22.8	10.5	0.0	0.0	91.6	0.00
New Jersey	56	1,161.7	480.3	273.7	17.3	32.7	1,965.6	0.00
New Mexico	40	52.7	26.1	18.7	0.3	1.5	99.4	0.00
New York	93	3,764.9	776.8	1,362.1	114.3	161.8	6,179.9	696.98
North Carolina	15	332.8	164.3	64.2	3.4	11.7	576.4	0.15
North Dakota	30	14.1	19.6	9.3	0.0	4.3	47.3	0.00
Ohio	134	524.5	278.9	575.2	22.8	19.8	1,421.2	0.00
Oklahoma	167	53.2	42.2	21.6	0.0	4.0	121.0	0.00
Oregon	8	93.2	30.7	40.7	18.6	17.2	200.5	0.00
Pennsylvania	155	830.6	393.5	326.0	62.4	51.2	1,663.8	7.33
Rhode Island	3	177.1	56.5	34.4	57.1	21.3	346.5	0.00
South Carolina	31	157.8	52.9	57.1	1.3	1.7	270.8	0.00
South Dakota	21	14.2	22.7	1,082.4	0.1	7.8	1,127.2	0.00
Tennessee	43	134.1	63.6	107.9	2.9	16.7	325.2	0.00
Texas	598	603.7	388.8	249.3	15.2	75.2	1,332.3	5.55
Utah	6	72.5	27.2	25.7	1.0	3.2	129.6	0.00
Vermont	12	57.1	27.8	8.8	0.0	0.0	93.7	0.00
Virginia	46	445.7	118.7	158.8	1.4	8.0	732.5	0.00
Washington	27	274.2	97.1	122.5	3.3	41.7	538.8	0.00
West Virginia	78	82.7	40.4	57.4	0.0	0.2	180.7	0.00
Wisconsin	98	119.0	131.6	51.7	7.0	10.1	319.5	0.00
Wyoming	32	2.8	18.4	5.0	0.0	0.0	26.2	0.00
[illegible]	1	0.5	2.9	0.7	0.0	0.0	4.1	0.00

[1] [illegible] less than $300 million, this category captures commercial (time and demand) and all other loans
[2] [illegible] less than $300 million, this category captures installment loans and credit cards and related plans
[3] [illegible] of less than $300 million
[illegible] $300,000

Percent of loans past due, by asset size of national banks[1]

	Less than $300M	$300M to $1B	$1B to $10B	Greater than $10B	All national banks
Real estate					
June 1990	2.04	2.04	2.29	2.71	[illegible]
September 1990	2.15	2.13	2.76	2.80	[illegible]
December 1990	2.55	2.61	3.37	3.78	3.38
March 1991	2.68	2.88	3.47	3.97	3.54
Commercial and industrial[2]					
June 1990	4.35	2.55	2.16	1.13	1.77
September 1990	4.36	2.72	1.97	1.10	1.76
December 1990	4.55	2.73	2.17	1.56	2.03
March 1991	5.00	2.80	2.08	1.35	1.92
Personal[3]					
June 1990	2.47	2.87	3.67	2.97	3.20
September 1990	2.70	3.21	4.27	3.26	3.63
December 1990	3.11	3.25	3.99	4.28	3.92
March 1991	2.80	2.89	4.41	3.57	3.78
Leases					
June 1990	2.12	1.37	1.43	1.14	1.24
September 1990	1.91	1.47	1.68	1.43	1.51
December 1990	2.49	1.81	2.31	1.43	1.73
March 1991	2.95	1.39	2.31	1.47	1.76
Other loans					
June 1990	0.02	0.75	1.11	0.79	0.82
September 1990	0.03	0.77	1.07	1.01	0.93
December 1990	0.01	0.69	1.28	0.80	0.85
March 1991	0.06	0.92	1.75	0.61	0.86
Total loans					
June 1990	2.49	2.27	2.48	1.88	2.17
September 1990	2.57	2.43	2.75	1.98	2.33
December 1990	2.89	2.66	2.99	2.66	2.78
March 1991	2.99	2.73	3.18	2.51	2.79

[1]Past due loans in each category are stated as a percentage of loans outstanding of that type.
[2]For banks with assets of less than $300 million, this category captures commercial (time and demand) and all other loans.
[3]For banks with assets of less than $300 million, this category captures installment loans and credit cards and related plans.

Office of the Comptroller of the Currency — Financial Statements December 31, 1990

Balance Sheets

Assets	December 31 1990	December 31 1989
Current assets—		
Cash and cash equivalents	$ 3,883,492	$ 599,611
Receivables:		
Travel advances	896,513	882,776
Accounts receivable	2,574,019	2,559,064
Accrued interest	1,510,701	2,288,078
Total receivables	4,981,233	5,729,918
Investment securities	42,871,259	82,509,871
Prepaid expenses and other assets	2,526,837	1,843,439
Total current assets	54,262,821	90,682,839
Investment securities, long-term	36,574,903	—
Other non-current assets	—	50,000
Fixed assets and leasehold improvements:		
Furniture, equipment and software	13,980,233	14,070,320
Leasehold improvements	22,471,232	18,591,379
	36,451,465	32,661,699
Less: accumulated depreciation and amortization	20,988,539	16,212,674
Net fixed assets and leasehold improvements	15,462,926	16,449,025
Total assets	$106,300,650	$107,181,864
Liabilities and Comptroller's Equity		
Current liabilities:		
Accounts payable and accrued expenses	$ 6,456,066	$ 9,256,415
Accrued travel and salaries	7,763,099	7,075,200
Total current liabilities	14,219,165	16,331,615
Accrued annual leave	12,274,625	11,250,703
Total liabilities	26,493,790	27,582,318
Comptroller's equity	79,806,860	79,599,546
Commitments and Contingencies (Notes 3 and 5)		
Total liabilities and equity	$106,300,650	$107,181,864

See accompanying notes to financial statements.

Office of the Comptroller of the Currency — Financial Statements December 31, 1990

Statements of Revenue, Expenses and Changes in Comptroller's Equity

	Years ended December 31	
	1990	1989
Revenue		
Semiannual assessments	$236,728,046	$226,806,532
Examinations and investigations	14,383,254	15,567,163
Investment income	10,030,446	10,365,358
Publication sales	900,260	1,097,869
Other	1,475,603	188,341
Total revenue	263,517,609	254,025,263
Expenses		
Salaries and benefits (Note 4)	188,064,381	168,036,744
Office space costs (Note 3)	22,795,747	23,694,077
Travel	21,656,018	19,575,370
Automated services	8,388,335	13,941,852
Communications	4,951,496	5,252,538
Relocation	4,253,035	3,636,369
Office equipment and furniture	3,205,661	3,543,959
Outside services	3,204,678	2,940,150
Office supplies, materials and services	2,412,792	2,147,029
Training	1,819,585	1,876,610
Printing and graphics	1,698,228	1,854,461
Conference	860,339	774,264
Total expenses	263,310,295	247,273,423
Excess of revenue over expenses	207,314	6,751,840
Comptroller's equity at beginning of year	79,599,546	72,847,706
Comptroller's equity at end of year	$ 79,806,860	$ 79,599,546

[illegible] statements

Statements of Cash Flows

	Years ended December 31, 1990	1989
Cash Flows From Operating Activities:		
Excess of revenues over expenses	$207,314	$6,751,840
Adjustments to reconcile excess of revenue over expenses to net cash provided by operating activities:		
Depreciation, amortization and losses on disposals	4,945,614	4,607,479
Decrease (increase) in accounts receivable, prepaid expenses and other assets	65,287	(1,859,070)
Decrease in non-current assets	50,000	50,000
Increase in accrued annual leave	1,023,922	888,347
(Decrease) increase in accounts payable, accrued payroll, travel, and other liabilities	(2,112,450)	1,123,845
Net cash provided by operating activities	4,179,687	11,562,441
Cash Flows From Investing Activities:		
Proceeds from sale of fixed assets	26,351	9,875
Purchases of fixed assets	(4,106,137)	(2,370,692)
Proceeds from the sales of investment securities	338,494,011	297,156,038
Purchases of investment securities	(335,310,031)	(306,881,217)
Net cash used in investing activities	(895,806)	(12,085,996)
Net increase (decrease) in cash	3,283,881	(523,555)
Cash and cash equivalents, beginning of year	599,611	1,123,166
Cash and cash equivalents, end of year	$ 3,883,492	$ 599,611

See accompanying notes to financial statements.

Notes to Financial Statements, December 31, 1990 and 1989

Note 1 — Organization

The Office of the Comptroller of the Currency (Comptroller's Office) was created by an Act of Congress for the purpose of establishing and regulating a national banking system. The National Currency Act of 1863, rewritten and reenacted as The National Banking Act of 1864, created the Comptroller's Office and provided for its supervisory functions and the chartering of banks.

No funds derived from taxes or federal appropriations are allocated to or used by the Comptroller's Office in any of its operations. The revenue of the Comptroller's Office is derived principally from assessments and fees paid by the national banks and income on investments in U.S. Government obligations. The Comptroller's Office is exempt from federal and state income taxes.

The Comptroller's Office is a bureau within the Department of Treasury. The Department of Treasury provides certain administrative services to the Comptroller's Office, which pays the Department of Treasury for services rendered pursuant to their interagency agreements. Periodically, payments for anticipated services are made in advance in accordance with instructions from the Department of Treasury. Administrative services provided by the Department of Treasury totaled $1,118,000 and $1,521,000 for the years ending December 31, 1990 and 1989, respectively. Prepaid expenses at December 31, 1990 and 1989 include advances to the Department of Treasury totaling $1,080,000 and $348,000, respectively.

Note 2 — Significant Accounting Policies

The accounting policies of the Comptroller's Office conform to generally accepted accounting principles; accordingly, the financial statements are presented on the accrual basis of accounting.

Investment securities with maturities through August [illegible], 1994 are U.S. Treasury obligations stated at amortized cost, which approximates market value. Premiums and discounts on investment securities are amortized to maturity using the effective interest method. For the purpose of the statement of cash flows, the Comptroller's Office does not consider investment securities as cash equivalents, while overnight certificate investments are considered as cash equivalents.

Furniture and equipment are capitalized at cost less accumulated depreciation calculated on a straight-line basis over the estimated useful lives of the assets, which range from 3 to 10 years. Leasehold improvements are capitalized at cost less accumulated amortization computed over the terms of the related leases (including renewal options) or their estimated useful lives, whichever is shorter. Expenditures for maintenance and repairs are charged to earnings as incurred.

Note 3 — Commitments

The Comptroller's Office occupies office space in Washington, D.C. under a lease agreement which provided for an initial five-year term with five consecutive five-year renewal options. During 1984, the second of these renewal options, expiring in 1989, was exercised. In December 1988, the Comptroller's Office decided not to exercise the third renewal option and to relocate its Washington, D.C. office space in 1991. As a result of this decision, the Comptroller's Office has negotiated a lease that extends until the occupancy of the new office space. A lease has been negotiated for the new office space through the year 2006. The capitalized leasehold improvements for the current space are being amortized over the anticipated remaining life of the negotiated lease, resulting in additional expenses of $3,300,000 through June, 1991.

The district and field offices lease space under agreements which expire at various dates through 2006. Minimum rental commitments for the districts and field offices, and the gross rentals for space and furniture for the new Washington, D.C. office space, which may be capitalized upon occupancy, at December 31, 1990 are shown in the table below. An additional amount of approximately $1.1 million has been committed for leasehold improvements for the new Washington, D.C. office space.

1991	$ 17,328,000
1992	21,099,000
1993	21,229,000
1994	20,056,000
1995	19,060,000
1996 and after	146,356,000
	$245,128,000

Certain of these leases provide that annual rentals may be adjusted to provide for increases in taxes and other related expenses. Total rental expense under office leases was $18,073,000 and $19,150,000 for the years ended December 31, 1990 and 1989, respectively.

Note 4 — Retirement Plans

The Comptroller's Office contributes to the Civil Service Retirement System and the Federal Employees' Retirement System administered by the Office of Personnel Management for the benefit of U.S. government employees. Contributions aggregated $13,066,000 and $11,973,000 in 1990 and 1989, respectively. The retirement plans are participatory. Under the Civil Service Retirement System 7 percent of salary is contributed by each party. Under the Federal Employees' Retirement System, 13 percent of salary is contributed by the Comptroller's Office and 8 percent of salary is contributed by the employee. Although the Comptroller's Office funds a portion of the pension benefits under these two retirement plans and makes the necessary withholdings from employees, it has no liability for future payments under either plan. Further, the Comptroller's Office does not account for the assets or accumulated liabilities of either plan, nor does it maintain actuarial data thereon.

Additionally, the Comptroller's Office contributes up to 5 percent of base pay for participants in the Thrift Savings Plan under the Federal Employees' Retirement System. The Comptroller's Office also contributes for Social Security and Medicare benefits for all eligible employees. Contributions for the savings plan and post employment benefits other than retirement aggregated $2,499,000 and $2,005,000 in 1990 and 1989, respectively.

Note 5 — Contingencies

Various banks in the District of Columbia have deposited securities with the Comptroller's Office as collateral for those banks entering into and administering trust activities. These securities, having a par or stated value of $17,060,000 at December 31, 1990 are not assets of the Comptroller's Office and accordingly, are not included in the accompanying financial statements.

The Comptroller's Office is a defendant, together with other bank supervisory agencies and other persons, in various litigation proceedings resulting from the closure of national banks. In the opinion of the Comptroller's legal staff, the Comptroller's Office will be able to defend successfully against these complaints and no material liability is expected to result therefrom.

During 1990, a case was litigated in the U.S. District Court in which the Comptroller's Office and the Federal Deposit Insurance Corporation were joint defendants. The case resulted in a judgement for the plaintiff who is seeking $270,000,000. The court has not determined the amount that would represent a liability of the Comptroller's Office. In the opinion of the Comptroller's legal staff, the Comptroller's Office has a meritorious appeal and in the event a monetary judgement is rendered against it no material liability will be incurred by the Comptroller's Office.

Office of Government Services
1801 K Street, N W
Washington, DC 20006
Telephone 202 295 0800

Price Waterhouse

Report of Independent Accountants

April 5, 1991

Comptroller of the Currency

In our opinion, the accompanying balance sheets and the related statements of revenue, expenses and changes in Comptroller's equity and of cash flows present fairly, in all material respects, the financial position of the Office of the Comptroller of the Currency (Comptroller's Office) at December 31, 1990 and 1989, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles. These financial statements are the responsibility of the Comptroller's Office management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with generally accepted auditing standards and *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

Price Waterhouse

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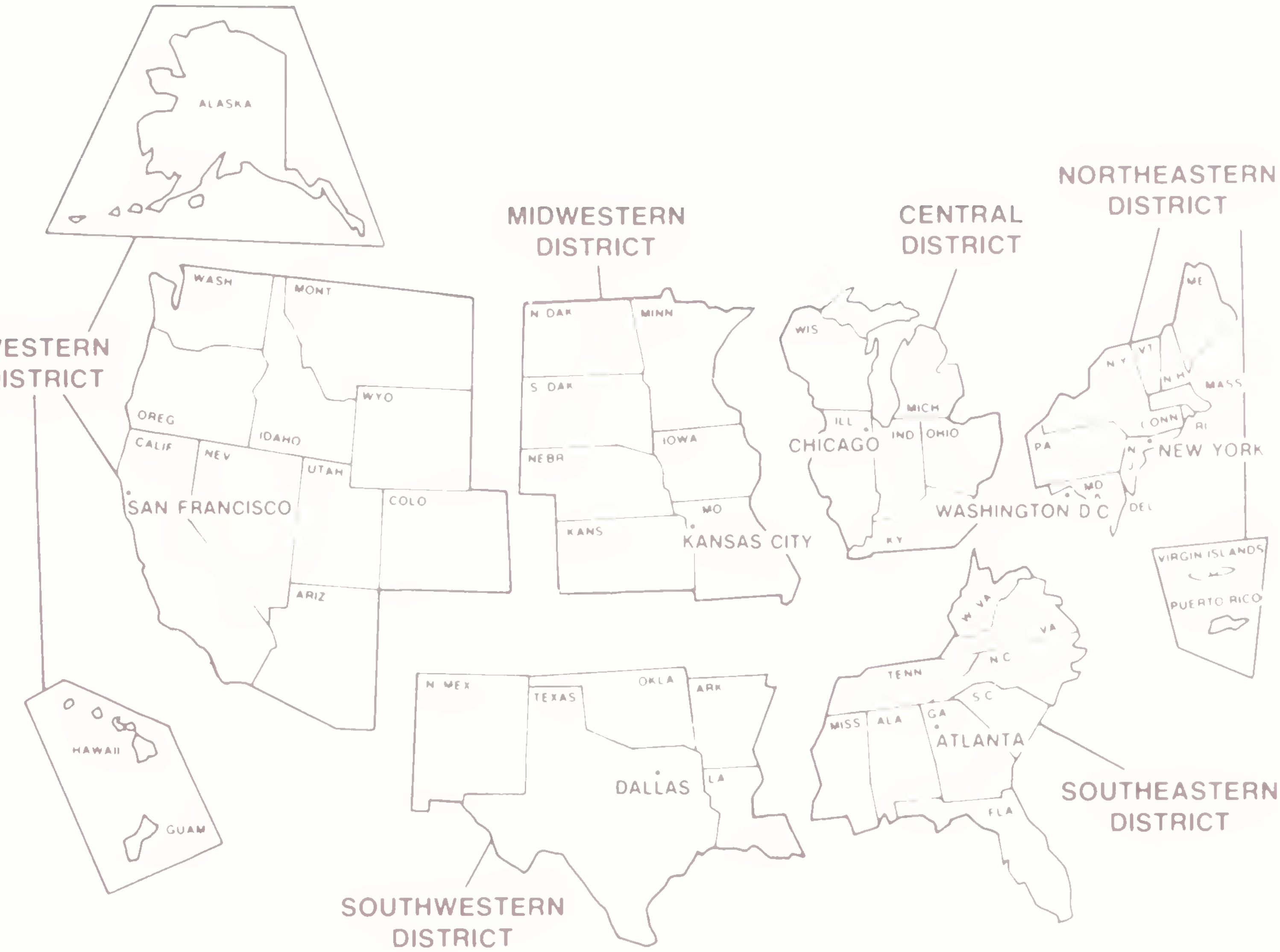

Northeastern District

New York District Office
1114 Avenue of the Americas
Suite 3900
New York, NY 10036

FTS 8-265-3495
Commercial 212-819-9860

Central District

Chicago District Office
One Financial Place
Suite 2700
440 South LaSalle Street
Chicago, IL 60605

FTS 8-364-8000
Commercial 312-663-8000

Southwestern District

Dallas District Office
1600 Lincoln Plaza
500 North Akard
Dallas, TX 75201-3394

Commercial 214-720-0656

Southeastern District

Atlanta District Office
Marquis One Tower
Suite 600
245 Peachtree Center Ave., N.E.
Atlanta, GA 30303

Commercial 404-659-8855

Midwestern District

Kansas City District Office
2345 Grand Avenue
Suite 700
Kansas City, MO 64108

Commercial 816-556-1800

Western District

San Francisco District Office
50 Fremont Street
Suite 3900
San Francisco, CA [illegible]

FTS [illegible]
Commercial 415-[illegible]

SPECIAL FOURTH-CLASS RATE
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Comptroller of the Currency
PERMIT NO. G-8

Comptroller of the Currency
Administrator of National Banks

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